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# Recent Development in Arkansas Oil and Gas Law - Circa 2007

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January 28, 2008

Hon. Heber S. Quitman  
Lawyer on the Lamb  
C/O Red Bar  
70 Hotz Ave  
"Downtown" Grayton Beach, FL

Re: Doing your work for you

Dear Heber,

I'm sure relieved you called the other day from Birmingham, since I thought you were just home hiding under the weather. You were breakin-up on your cell though, so I missed about everything you said. I thought I'd better write and bring you up to date.

I think you forgot you promised the Bar Association you'd give them some kind of talk on oil and gas law stuff. Since you don't want those people mad at you, if you ever come back here, I looked up the subject on that VersusLaw thing you showed me. I'm going to send this in to them in the morning. Maybe they can get someone to read it at the convention, if you forget to show up.

Here goes:

\* \* \*

## **RECENT DEVELOPMENTS IN ARKANSAS OIL AND GAS LAW CIRCA 2007**

BY: THOMAS A. DAILY<sup>1</sup>

### ***BLANCHARD CASE GETS SOFT LANDING BUT OPINION SUGGESTS ISSUES***

This time last year we were looking at a case on its way to the supreme court from Columbia County Circuit Court. Here is what we said then:

You have heard the term "runaway jury", right? Well then, how do you

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<sup>1</sup> Member, Daily & Woods, P.L.L.C.

feel about a runaway judge. We are not talking about a jurist who failed to show up for court, either. *El Paso Exploration Company v. Blanchard* is an example of a runaway judge who stayed in the courtroom. As they say, however, "bad facts make bad law," and this case has enough bad facts to repeal the ten commandments.

It all started when the A.O.G.C. enacted something called General Rule B-42, regulating seismic exploration. That rule, as originally enacted, provided:

No entry shall be made by the permittee upon the lands upon which such seismic operations are to be conducted without the permittee having first secured a permit from the **landowner** authorizing such operation to be conducted. (emphasis added) [**Note: B-42 has since been amended to remove the problem language. Now the seismic operator is only required to give notice to the surface owner**]

James Blanchard is clearly a "landowner." He owns the surface and a one-half mineral interest under the tract involved in the litigation. Blanchard gave an oil and gas lease to a company named Swift Energy Company. That lease authorized, among other things, exclusive geophysical operations. The lease also prohibited assignment without Blanchard's consent.

The other one-half mineral interest was leased to El Paso's predecessor, Sonat. That lease also authorized geophysical operations. Swift and Sonat entered into an agreement whereby each became obligated to permit certain seismic operations conducted by the other and acquired the right to purchase a license to the data. Apparently pursuant to this agreement, Swift permitted Sonat to conduct seismic operations on its lease from Blanchard.

As luck would have it, Blanchard is an extremely disgruntled Sonat ex-employee. He apparently even claims to still have festering knife wounds resultant from an altercation with another Sonat employee. Under no circumstances would Blanchard permit Sonat to conduct seismic operations upon his land. When Sonat's contractor approached him for a permit, Blanchard refused.

Sonat applied for and received a temporary restraining order allowing access to Blanchard's land. The seismic was conducted with very little surface damage, but, unfortunately, no promising discoveries of potential hydrocarbons.

Meanwhile, Blanchard made a discovery of his own, A.O.G.C. General Rule B-42, and counterclaimed, alleging trespass, surface damages under the express provisions of the Swift lease and interference with contract by Sonat.

After years of motions, every one of which Sonat lost, Sonat [by then, El Paso] lost again in a bench trial. The circuit judge held that Sonat, by not obtaining Blanchard's express permission, had violated General Rule B-42, and was thus a trespasser. He further held that Swift's purported attempt to permit Sonat's operation was precluded by the prohibition against assignment in the Swift lease. Finally, he agreed with Blanchard that Sonat had interfered with Blanchard's contract with Swift. It was then that things really went bad for Sonat.

In addition to surface damages, apparently awarded twice, the circuit judge awarded Blanchard \$260,000 on a strange theory of unjust enrichment. The calculation is interesting, to say the least. The circuit judge took the average AFE dry hole cost of several wells in the vicinity and subtracted the cost of the seismic line shot by Sonat. He concluded that Sonat saved \$260,000 by condemning the acreage with the seismic line, rather than by drilling a dry hole. Then, through unexplained reasoning, he awarded that savings to Blanchard as a windfall. Mercifully, the circuit judge denied Blanchard's request for punitive damages.

Well, Heber, the Supreme Court ruined Blanchard's day for sure. The Court ruled, on appeal,<sup>2</sup> that all those damages were improper. It left him with only actual damages for injury to his land.<sup>3</sup> That is precisely the result we predicted at last year's institute.

However, you better read the Court's opinion carefully. There is more in there than just the value of Blanchard's trees.

First, remember the circuit judge gave Blanchard damages for breach of contract, since he ruled that Swift's permission allowing Sonat to do the seismic work amounted to an assignment of the lease without consent. The Supreme Court held

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<sup>2</sup>*El Paso Production Company v. Blanchard*, \_\_\_\_ Ark. \_\_\_\_, \_\_\_\_ S.W. 3d \_\_\_\_ (Case No. 061107, 2007).

<sup>3</sup>According to the opinion, Blanchard had offered to take \$173.72 for this element of his damages before suit was filed.

otherwise. The lesson there is that a general prohibition upon assignment of a lease will not prevent the lessee from permitting someone else to conduct seismic or, presumably, any other kind of unit operations. That is a pretty good ruling.

The Supreme Court also reversed the trial judge's ruling that Sonat had tortiously interfered with Blanchard's contract with Swift. The Court's reasoning was simple and to-the-point. Since the seismic permit was not a breach in the first place, the contract had not been interfered with.

Still, the Supreme Court did find that Sonat was a trespasser because it had violated A.O.G.C. General Rule B-42.<sup>4</sup> El Paso had argued that since it had the permission of Swift and its own lessor, it had complied with the rule. Alternatively, El Paso argued that if B-42 gave the surface owner a veto over operations authorized by the mineral owner, the regulation constituted an unconstitutional taking.

The Supreme Court did not agree. It held that the former version of B-42 empowered surface owners, and that it was constitutional. Both of those are questionable and potentially problematic rulings. What if the Commission, by rule, or the Legislature, by statute, purported to require surface owner consent to drilling operations? Is that not a taking? Since the "taking" argument raises a federal constitutional issue as well, there is a higher authority if this ever comes up again.

Still, there is a clear lesson here. **Pay attention when the A.O.G.C. starts writing rules.** The Commission never intended to do what B-42 did, but it is not what you mean in a rule, it is what you say. The Commission will listen to you if you show them a bug in a proposed rule. **Pay attention; find the bug before the rule is final.**

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<sup>4</sup>As written at the time.

**STROHACKER COMES TO THE FAYETTEVILLE SHALE – POSSIBLE  
SUBTLE SHIFT IN STROHACKER STANDARD IS SUSPECTED**

You can always tell when a new oil or gas play begins to mature. The shock and awe over the discovery and its potential for economic stimulation fades somewhat. Meanwhile, good old fashioned greed begins to peek through. The good citizens are less excited about greater good and more interested in securing a greater piece of good for their personal selves, even if that piece really belongs to someone else. The natural result of the shift is that good old American sport, litigation. Well, Heber, the Fayetteville Shale play is certainly no exception.

The number of new lawsuits involving claims to ownership of mineral interests within the Shale counties is growing, geometrically. The theories involved in these are varied, but some, at least, involve that old favorite, *Strohacker*. Let us review.

All of Arkansas was part of the Louisiana purchase.<sup>5</sup> Thus, all Arkansas land titles begin with United States' patents.<sup>6</sup> To spur economic development the United States patented large tracts to the railroads, which sold them to raise cash for infrastructure. Part of the time the railroads reserved "all coal and mineral deposits" in those sales.

In its 1941 landmark decision, *Missouri Pacific Railroad, Thompson, Trustee v. Strohacker*,<sup>7</sup> the Arkansas Supreme Court gave meaning to those words, in the context of an 1892 deed. The court found the phrase to be ambiguous, as far as oil and gas were concerned. It further noted that oil and gas had not always been recognized as

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<sup>5</sup>In 1803, for twenty-three million, American, and change, the United States bought the central approximately one-fourth of its current contiguous land mass from France.

<sup>6</sup>Unless, of course, the United States still owns the land.

<sup>7</sup>228 Ark. 632, 152 S.W.2d 557 (1941).

minerals in the way they were at the time of the decision (1941). Thus, a generic grant or reservation of “mineral” in a historic deed only included oil and gas if oil and gas were intended to be included. Since we are usually without a clue what was “intended” in a historic deed, the court adopted an objective factual standard for determining that subjective fact.

Quoting from a number of respected prior opinions from other states the court set a standard of “legal and commercial usage” as the test of what minerals were minerals at the time and place of the grant:

If the reservations had been made at a time when oil and gas production, or explorations, were general, and **legal or commercial usage** had assumed them to be within the term “minerals,” certainly appellant should prevail.<sup>8</sup>

Applying that standard, the court found that oil and gas were not minerals, within the legal and commercial usage in Miller County in 1892 and, thus, Strohacker won the case. In several later decisions the court, as well as federal district courts applying Arkansas law,<sup>9</sup> have applied the same test, on a county by county basis.<sup>10</sup>

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<sup>8</sup>*Strohacker*, supra, 202 Ark. at 651. Emphasis added.

<sup>9</sup>For a thorough, thoughtful discussion of these cases, and the *Strohacker* doctrine in general, see DeLung, *The Strohacker Doctrine – an Arkansas Rule of Property*, which was published both in the **Arkansas Lawyer** magazine and in the proceedings of the 14<sup>th</sup> Annual Arkansas Oil and Gas Institute (now Natural Resource Law Institute) in 1975.

<sup>10</sup>In spite of the views of the late justice McFadden, whose two lucid dissenting opinions in *Stegall v. Bugh*, 228 Ark. 632, 210 S.W. 2d 351 (1958) and *Ahne v. The Reinhart and Donovan Co.*, 240 Ark. 691, 401 S.W. 2d 565 (1966), urged the rest of the court to stop “drifting like a ship without a rudder” and adopt a statewide date for oil and gas recognition as a rule of property:

In short, I still insist that I was right in my dissent in *Stegall v. Bugh*, supra. I probably will not be on this Court when another mineral reservation case arises; but I predict that at some time the Court must fix a statewide date when it was generally recognized that oil and gas were minerals. We have before us in the case at bar as fine a record as will ever be presented on this question; and I think this is the time when it should be done; and I would still insist on January 1, 1900, as such date - or, if the “beginning of the century” is considered a more poetic date, then Jan. 1, 1901, would satisfy the situation.

( 240 Ark. at 701.)

Well, Heber, the Fayetteville Shale counties are new counties, right? Each is entitled to its own *Strohacker* date unless the Court finally sees the wisdom of Justice McFadden. Let the games begin. *Webco, Inc., et al v. Upland Industrial Development Company*<sup>11</sup> involved the following 1938 Faulkner County reservation:

...reserving, however, to the said Missouri Pacific Railroad Company and to the said Trustee, Missouri Pacific Railroad Company, debtor, and each of their successors and assigns, all the minerals, upon, in or under the said land or any part thereof, together with the right to enter upon said land, or any part thereof, and explore, dig, mine or drill for and remove minerals supposed to be in, upon or under said land, or any part thereof, and to erect, place, use, occupy and enjoy upon said land or any part thereof, such roads and ways, structures, buildings, pipe lines, tools, implements, or machinery as may be proper, necessary or convenient in or about the exploring, digging, mining, or drilling for or removal of any minerals, without any claim for damages on behalf of said second party or assigns.

Can you believe it, Heber? The plaintiff, Webco, actually argued, with straight-face that that language, in 1938, did not include oil and gas. Judge Eisele did not waste a lot of time with this one. He granted summary judgment for Upland, noting that in its 1941 *Strohacker* opinion the Arkansas Supreme Court said “[i]t can no longer be doubted that a reservation of minerals, or mineral rights, is sufficient to identify oil and gas.”

As noted above, in *Strohacker* the court cited many decisions from other states. Those included an ancient Pennsylvania decision: “We agree with Chief Justice Gibson of Pennsylvania that ‘The best construction is that which is made by viewing the subject of the contract as the **mass of mankind** would view it; for it may be safely assumed that such was the aspect in which the parties themselves viewed it.’ *Schuylkill Nav. Co. v.*

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<sup>11</sup>USDC Case No. 4:07-CV-00035 GTE (E.D. Ark. 2007).



Moore, 2 Whart. (Pa.) 477.”<sup>12</sup>

Two recent Arkansas decisions,<sup>13</sup> neither of which involve oil and gas, cite *Strohacker*. as standing for the proposition that contract language means whatever the “mass of mankind” would think it means. This is an interesting development. Perhaps it is ego; perhaps pride in my long expensive education, but, darn it, Heber, I am smarter than the “mass of mankind.” I am capable of practicing “legal and commercial usage.” Has the Court “dumbed down” the *Strohacker* standard? Has the rudderless ship drifted again? I would not stand too close to Justice McFadden’s grave any time soon.

#### **FEDERAL DISTRICT COURT VOIDS LEASE FOR UNTIMELY PAYMENT OF DRAFT**

In oil and gas leasing, bonus payment is often made, not by cash or check, but by bank draft. Apparently, this practice has arisen from a competitive need to secure the lease prior to completing title examination, as well as the lessee’s desire to confirm that the lease form is properly executed and not altered in an unauthorized manner.<sup>14</sup>

In *FalWell v. American Shale Resources, L.L.C.*<sup>15</sup> the Falwells leased to American Shale in exchange for checks for 30% of the lease bonus plus thirty-day drafts for the remaining 70%. The drafts were conditioned upon approval of title. Title examination was not completed within the thirty-days. The Falwells, who, by then, had a better offer, returned the 30% and demanded a release. When American Shale refused, the

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<sup>12</sup>*Strohacker*, supra 602 Ark. at 655. Emphasis added.

<sup>13</sup>*Coleman v. Regions Bank*, 264 Ark. 59, 216 S.W. 3d 569 (2005); *Alexander v. McEwen*, 267 Ark. 241, \_\_\_\_ S.W. 3d \_\_\_\_ (2006).

<sup>14</sup>For a thorough discussion of this practice, and its implications, see Knutson and Magerfleisch: *THE USE AND MISUSE OF SIGHT AND TIME DRAFTS IN OIL AND GAS LEASING TRANSACTIONS*, 29 Rocky Min. L. Inst. (1983).

<sup>15</sup>USDC Case No. 4:06-CV-00609 SW W (E.D. Ark. 2007).

Falwells sued for cancellation.

U.S. District Judge Susan Weber Wright ruled for the Falwells. She decided the contract was conditioned upon timely payment of the drafts, and, since it was a condition, would be strictly enforced. At least American Shale got its 30% back.

The case does not answer the more common question, whether a lessee has a right to avoid payment of a draft, absent failure of title, when the lessee no longer wants the lease, for whatever reason. That remains an undecided issue in Arkansas for now.

### **A.O.G.C. CONTINUES TO MODERNIZE RULES AND PROCEDURES**

The Arkansas Oil and Gas Commission continued to modernize its rule book throughout 2007. Several old passe rules were repealed.<sup>16</sup> Several existing rules were revised.<sup>17</sup> Additionally, there are several rule change proposals now pending<sup>18</sup> and others to come. Those which have drafts available for viewing are set out in the Appendix to this paper.

Note especially the rules for selecting an operator set out in revised B-43, as well as the fact that it now permits administrative approval of cross-unit shared wells. Under the revised B-40, almost every location exception can also now be approved administratively.

There are a couple of other changes which do not exactly jump out at you. For

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<sup>16</sup>A.O.G.C. General Rules B-4, B-12, B-22, B-25 and B-28 were all repealed during 2007.

<sup>17</sup>A.O.G.C. General Rules B-7, B-26, B-34, B-37, B-40, B-43 and D-17 were all amended during 2007.

<sup>18</sup>New proposed A.O.G.C. General Rules A-1, A-2, A-3, G-1, G-2, and G-3 are in the early stages of the rule making process. Amendments to A.O.G.C. General Rules B-5 and D-16 await only legislative approval.

one thing, the Commission now encourages that applications be filed electronically<sup>19</sup>, as well as by submitting multiple paper copies. Electronic filing is not mandatory, but if you do file electronically by a date twenty days before the hearing, you get two extra days to submit the paper copies.

Equally important is the Commission's decision to permit testimony by sworn affidavit in routine uncontested matters.<sup>20</sup> That practice will likely become the norm, thus appreciably shortening the time required for dockets to be heard.

\* \* \*

Well, Heber, that's about it for now. Don't forget to drink your vegetables.

Your long lost partner,

Scott Land Clinton

SLC/hs

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<sup>19</sup>In the form of an Adobe Acrobat (PDF) file, contained on a diskette, cd, dvd or flash drive but not emailed.

<sup>20</sup>Such affidavits were prefiled by the author in connection with his January and February, 2008 applications and can thus be viewed, for form, on the A.O.G.C.'s website (<http://www.aogc.state.ar.us/>.)

#### **RULE B-4 - IDENTIFICATION OF WELLS**

~~Hereafter every person drilling for oil or gas in the State of Arkansas, or operating, owning or controlling or in possession of any well, drilled for oil or gas, shall paint or stencil and post and keep posted in a conspicuous place near the well, the name of the person, corporation, company, or association drilling, operating, owning or controlling the well, the name of the farm and the number of the well.~~

#### **RULE B-12 - CASING PULLER'S PERMITS AND BONDS**

~~Before any person shall hereafter engage in the business of pulling casing from any oil or gas well in this state for compensation, or shall hereafter engage in the business of purchasing abandoned wells, with intention of salvaging casing therefrom, such person shall apply for and obtain from the Commission, a permit to engage in such business. Before the Commission shall issue any such permit to any person to engage in the business mentioned in this paragraph, such person shall be required to file with the Commission a bond executed by such person, as principal, and some surety company satisfactory to the Commission as surety, in the principal sum of \$5,000.00 conditioned that such sum shall be paid the state of Arkansas for the use and benefit of the Commission, in the event the principal shall fail to plug an oil or gas well from which the principal pulls casing in the State of Arkansas without complying with the rules of the Commission.~~

~~The Commission shall issue said permits for a term not less than one year, nor more than three years, and the bond required according to the foregoing provisions shall be for a term co-extensive with the terms of the permit.~~

~~The Commission will revoke the permit of any person, firm or corporation issued according to the foregoing provisions of this rule, if upon hearing held, with a reasonable notice to the holder of said permit, and at which the holder of the permit is allowed to be heard and to examine witnesses, it is ascertained by the Commission that the holder of the permit in the conduct of his business has failed to comply with any regulation established by the statutes of the state, or the rules and regulations of the Commission.~~

~~The permit so issued shall not be transferable from one person to another and one person shall not operate under the permit of another.~~

~~Any person who knowingly and willfully violates any provision of Rule B-12, as amended, shall be subject to a penalty of not to exceed One Thousand Dollars (\$1,000.00) a day for each and every day of such violation, and for each and every act of violation, such penalty to be recovered in the manner set out in Act 105 of the Fifty Second General Assembly of the State of Arkansas for the year 1939.~~

#### **RULE B-22 - RUBBISH OR DEBRIS**

~~Any rubbish or debris that might constitute a fire hazard shall be removed to a distance of at least one hundred fifty (150) feet from the vicinity of wells, tanks and pump stations. All waste shall be burned or disposed of in such manner as to avoid creating a fire hazard or polluting streams and fresh water strata.~~

### **RULE B-25 - SEPARATORS**

~~All flowing wells must be produced through an approved oil and gas separator.~~

### **RULE B-28 - EMULSION, B.S., AND WASTE OIL**

~~Wells producing oil shall be operated in such manner as will reduce as much as practicable the formation of emulsion and B.S. These substances and waste oil shall not be allowed to pollute streams or cause surface damage.~~

**FINAL**

**RULE B-7 - WHEN WELLS SHALL BE PLUGGED AND ABANDONED AND  
NOTICE OF INTENTION TO PLUG AND ABANDON SUPERVISION (PLUG)  
WELLS**

- a) The current permit holder is responsible for plugging wells as defined in this rule. In the case of leaking wells, plugging responsibility is in accordance with General Rule B-26 (k) and (l).
- b) All new holes wells drilled in search of for oil, or gas, or brine exploration, oil, gas or brine production, water supply or injection purposes, except such holes as are described in Rule B-10, and drilled below the base of the fresh water sands, regardless of depth are required to be either properly cased with production casing or the uncased well or dry hole shall to be plugged and abandoned in accordance with subparagraph (c) below and in accordance with the procedure described in Rule B-8, prior to the time that the regular equipment used to drill said well is released from the drilling operation.
- c) Uncased wells and dry holes
- 1) Any well in which production casing is not set and cemented shall be plugged in accordance with General Rule B-8 prior to the time that the equipment used to drill said well is released from the drilling operation, unless an extension of time has been granted by the Director. In determining whether to grant an extension and in determining the length of an extension, the Director will consider:
- A) The permit holders specific plans for further wellbore utilization,  
B) The total depth of the well,  
C) The depth of surface casing,  
D) A description of the current condition of the hole including a description of the type of drilling fluids currently in the well,  
E) The location of the well.
- 2) If the Director determines that the uncased well presents a risk of contamination to the environment or a risk to public safety the Permit Holder shall be required to repair, case, plug or perform other remediation measures to the well, as determined by the Director, within twenty four (24) hours after notification by the Director.
- d) All cased wells utilized for oil, gas or brine production, water supply or injection purposes, except such holes as are described in Rule B-10, shall be plugged and abandoned in accordance with General Rule B-8, when no longer used for the wells intended purpose or, at the discretion of the Director, when the well has been idle for more than 24 months or sooner should the Director determines that the cased well presents a risk of contamination to the environment or a risk to

- public safety. Upon such determination by the Director, the Permit Holder shall commence plugging the well within 30 days after notification by the Director.
- e) Prior to the commencement of any work in plugging and abandonment operations, the permit holder owner, operator, driller, contractor, or other person responsible for the conduct of the drilling operations shall give written notice of his- the intent to plug and abandon such well to the Oil and Gas Commission on- in a form; Application to Plug- prescribed by the Director as follows:
- 1) For uncased wells and dry holes, notice shall be provided via verbal or facsimile communication to the Commission Regional Office where the well is located, as soon as possible, but no less than 8 hours, prior to commencement of plugging operations.
  - 2) For cased wells, written notice on a form prescribed by the Director shall be provided to the Commission Regional Office where the well is located, at least 72 hours prior to the commencement of plugging operations.
- f) Upon receipt and review of such verbal or written notice, the Commission Regional Office shall issue a plugging permit as required by law- authorize the commencement of plugging operations and shall- may send a duly authorized Commission representative to the well location specified to be present at the time indicated in such notice to supervise witness the plugging of such well.
- g) A permit- Authorization to plug or- and abandon will- is not be issued- granted unless the appropriate notice, as specified in subparagraph (e) above, has been provided reports required by existing rules and regulations of- to the Oil and Gas Commission have been furnished by the permit holder or person responsible for the plugging operator or owner of the well, for which said permit is requested- Plugging of the well without providing proper notice as required can result in the Permit Holder being required to drill out the well plugs and the well replugged under Commission observation.

## MARK-UP

### GENERAL RULE B-26 GENERAL LEASE OPERATING REQUIREMENTS

a) Definitions for purposes of this rule

- 1) “ADEQ” means the Arkansas Department of Environmental Quality.
- 2) “Crude Oil Tank Battery” means a combination of saltwater and crude oil storage tanks and other vessels commonly used in the production and temporary storage of crude oil.
- 3) “Director” means the Arkansas Oil and Gas Commission Director of Production and Conservation.
- 4) “EPA” means the United States Environmental Protection Agency
- 5) “Gas Well Produced Fluids Storage Tanks” means tanks or other vessels commonly used for the temporary storage of fluids, produced with natural gas, prior to disposal.
- 6) “Lease” means a tract of land under agreement by an owner or person, for the purpose of producing oil and or gas and allocating that production for himself or the owners of the oil and gas rights under that tract of land.
- 7) “Permit Holder” shall mean the operator or person, who is duly authorized to develop a lease or unit as owner or through agreement and has the right to drill and produce from any field or reservoir and to appropriate the production for himself or others.
- 8) “Produced Fluids” shall mean those fluids produced or generated during the crude oil production and separation process and shall include crude oil, crude oil bottom sediment; and shall include all waters regardless of chloride content; associated with production of oil and or gas.
- 9) “RCRA” means Subtitle C of the Federal Resource Conservation Recovery Act of 1976.
- 10) “USDW” means Underground Source of Drinking Water which is defined as an aquifer or its portion which:
  - (1) supplies any public water system; or
  - (2) contains a sufficient quantity of groundwater to supply a public water system and currently supplies drinking water for human



consumption or contains fewer than 10,000 mg/l total dissolved solids;  
and  
(3) Which is not an exempted aquifer (see 40 CFR).

b) Well Identification

- 1) Each oil and or gas well shall have a legible sign placed at the well showing the Permit Holder and the well name and number as shown on the permit as listed in the Commission records. If the lease is a single well lease, the well sign may be placed at the associated tank battery or lease entrance.
- 2) Every entrance from a public road to north Arkansas gas well sites shall have a legible sign placed at that entrance. The sign shall show the name of the Permit Holder, a list of all wells accessed by that entrance, the section, township and range, and a telephone number at which the Permit Holder or his authorized agent can be reached during an emergency.
- 3) For any newly drilled well, the required sign shall be posted within 45 days after cessation of drilling operations.
- 4) Any changes or corrections in the well information, required to be posted in accordance with this rule, shall be made to the well signs within sixty (60) days after the change occurs, or in the case of a transfer of well ownership, within sixty (60) days after the effective date of the transfer in the Commission records. All prior signs, if not correct, shall be removed.

c) Crude Oil Tank Batteries

- 1) All existing and newly constructed tank batteries shall be registered with the Commission and assigned a Commission registration number. Registration shall be reported to the Commission utilizing information as reported on the existing AOGC Form 6 Monthly Producers Report.
- 2) All tank battery registrations, shall be transferred, at the time of associated well transfers, utilizing the approved notice of well transfer forms filed with the Commission.
- 3) Each tank battery shall have a legible sign in a conspicuous place on or near the crude oil storage tank(s). The sign shall show the name of the Permit Holder who holds the Commission permit to operate the lease or unit, the lease name, the section, township and range, and a telephone number at which the Permit Holder or his authorized agent can be reached during an emergency.

- 4) All tank batteries consisting of tanks containing produced fluids or crude oil storage tanks or containing tanks equipped to receive produced fluids, shall be surrounded by containment dikes or other containment structures as may be appropriate under the circumstances, as approved by the Director. All containment dikes or other approved structures shall be constructed or installed in accordance with sub-paragraph (e) below.
- 5) Tank batteries constructed after the effective date of this rule, shall not be located:
- A) within 200 feet of an existing occupied habitable dwelling, unless the current owner of the structure has provided a written waiver consenting to the construction closer than 200 feet, in which case the tank battery shall be completely fenced to prevent unauthorized access; however, in no event may a tank battery may be constructed closer than 100 feet to an existing habitable dwelling; or
  - B) within 300 feet of a school, hospital or other type of public use building as defined in Arkansas Fire Prevention Code Section 3406.3.1.3.1; or
  - C) within 300 feet of a stream or river designated as an Extraordinary Resource Water (ERW), Natural and Scenic Waterways or Ecological Sensitive Waterbodies as defined by APC&E Regulation 2, or within 200 feet of other streams, waterways, rivers, ponds, lakes, wetlands (unless approved by other appropriate governmental agencies), or other bodies of water (as indicated by a blueline designation on a 7.5 minute USGS Topographic Map), unless the Permit Holder utilizes additional containment measures other than the required containment specified in sub-paragraph (e) below, as approved by the Director.
- 6) Tanks or any part of such tanks shall not be buried below the ground surface.
- 7) All tanks shall be maintained in a leak-free condition.
- 8) All open top tanks shall be covered with bird netting, or other system designed to keep birds and flying mammals from landing in the tank.

d) Gas Well Produced Fluids Storage Tanks

- 1) Tanks or any part of such tanks shall not be buried below the ground surface.
- 2) All tanks shall be maintained in a leak-free condition.

- 3) All open top tanks shall be covered with bird netting, or other system designed to keep birds and flying mammals from landing in the tank.
- 4) Tanks constructed after the effective date of this rule, shall not be located:
  - A) within 200 feet of an existing occupied habitable dwelling, unless the current owner of the structure has provided a written waiver consenting to the construction closer than 200 feet, in which case the tank battery shall be completely fenced to prevent unauthorized access; however, in no event may a tank battery may be constructed closer that 100 feet to an existing habitable dwelling; or
  - B) within 300 feet of a school, hospital or other type of public use building as defined in Arkansas Fire Prevention Code Section 3406.3.1.3.1; or
  - C) within 300 feet of a stream or river designated as an Extraordinary Resource Water (ERW), Natural and Scenic Waterways or Ecological Sensitive Waterbodies as defined by APC&E Regulation 2, or within 200 feet of other streams, waterways, rivers, ponds, lakes, wetlands (unless approved by other appropriate governmental agencies), or other bodies of water (as indicated by a blueline designation on a 7.5 minute USGS Topographic Map), unless the Permit Holder utilizes additional containment measures other than the required containment specified in sub-paragraph (e) below, as approved by the Director.
- 5) All tanks containing produced fluids or equipped to receive produced fluids shall be surrounded by containment dikes or other containment structures as may be appropriate under the circumstances, as approved by the Director. All containment dikes or other approved structures shall be constructed or installed in accordance with sub-paragraph (e) below.

e) Containment Dikes or Other Containment Structures

- 1) All Crude Oil Tank Batteries and Gas Well Produced Fluids Storage Tanks shall be surrounded by containment dikes or such other structure as may be appropriate under the circumstances, as approved by the Director. ~~When, in the opinion of the Arkansas Oil and Gas Commission, it is deemed necessary to prevent waste, protect life, health or property, unless an exception is granted by the Commission following notice and hearing, shall require the construction and proper maintenance of firewalls or such other structures as may be appropriate under the circumstances. The material utilized for the construction of said firewalls shall be sufficiently impervious so as to contain fluids and resist erosion. When such firewalls are required, they shall have no less than the capacity of one and one half (1½) times the largest tank or vessel they surround and shall be continually maintained. The area within said firewall shall be kept free of excessive vegetation and free of freshwater, saltwater, debris, oil or any~~

~~inflammable material. Any fluids collected within such containment shall be removed as soon as practical, using recycling or proper disposal methods. Drainage of any fluids from the containment area shall comply with all applicable regulatory standards and requirements. Drain lines installed through the firewall shall have a valve installed and be capped when not in use. Vegetation on the top and outside surface of firewalls shall be properly maintained so as to not pose a fire hazard.~~

- 2) Required containment dikes or other approved structures shall be designed to have a capacity of at least 1½ times the largest tank the containment dike or approved structure surrounds.
- 3) The natural or man-made material utilized for the construction of the required containment dikes or other approved structures and the natural or man-made material used to line the bottom of the containment area shall be sufficiently impervious so as to contain fluids and resist erosion.
- 4) Vegetation on the top and outside surface of containment structures shall be properly maintained so as to not pose a fire hazard.
- 5) The area within the containment dike or other approved containment structure shall be kept free of excessive vegetation, stormwater, produced fluids, other oil and gas field related debris, general trash, or any flammable material. Drain lines installed through the firewall, for the purpose of draining stormwater, shall have a valve installed which shall remain closed and capped when not in use. Any fluids collected, spilled or discharged within such containment structures shall be removed as soon as practical, using the following proper disposal methods:
  - A) Stormwater, which has not been mixed with non-exempt RCRA waste as defined by the EPA, may be drained from the containment structure provided the following conditions are met:
    - i) the chloride content shall not exceed applicable state water quality standards.
    - ii) there must be no visible evidence of hydrocarbons or hydrocarbon sheen present;
    - iii) the discharge shall only take place during daylight hours;
    - iv) a representative of the Permit Holder must be present during discharge; and
    - v) the Permit Holder shall maintain a record of each stormwater discharge, occurring in the previous 6 month period, and which shall be available for review upon request by Commission staff. The record shall indicate the location, quantity, chloride content, presence of any hydrocarbons (sheen), and date of discharge.
  - B) Produced fluids which have not been mixed with non-exempt RCRA waste as defined by the USEPA, may be recycled through the production equipment or removed from the containment structure and disposed in a properly permitted Class II UIC Well.
  - C) All stormwater and produced fluids which have been mixed with non-exempt RCRA waste as defined by the USEPA shall be removed and disposed in accordance with applicable Pollution Control and Ecology Commission regulations, as administered by ADEQ.

D) Crude oil bottom sediments (BS&W) may be:

i) applied on oil field lease roads under the following conditions:

- a) application shall be in such a manner as to avoid runoff onto immediately adjacent lands or into waters of the State; and
- b) immediately following completion of the application, all liquid fractions shall be immediately incorporated into the road bed with no visible free-standing oil; and
- c) no lease road shall be oiled more than twice a year; and
- d) no lease road shall be oiled during precipitation events; and
- e) the applied BS&W shall not have a produced water content greater than ten percent (10%) free water by volume; or

ii) injected into an inactive oil and gas production well:

- a) which has been equipped with tubing and packer, for the purpose of said injection, the packer to be set within the production casing, at least fifty (50) feet below the top of the production casing cement, but no less than five hundred (500) feet below the base of the deepest USDW, and
- b) injection of the BS&W shall not exceed 45 days, after which time the well shall be immediately plugged in accordance with General Rule B-8, and
- c) if the Director determines through field observations that the injection activities are endangering the USDW, the injection activities shall cease until the condition is corrected.

- 6) Any residual produced fluids remaining within the containment dike, after removal, as required in subsection (c) (5) above, shall be remediated in place in accordance with General Rule B-34.
- 7) Any spill, leak or discharge of produced fluids escaping from a containment dike shall be reported and remediated in accordance with General Rule B-34.
- 8) When a Crude Oil Tank Battery, Gas Well Produced Fluids Storage Tank or a gas well separator is removed, the Permit Holder shall remove all above ground piping and flowlines coming into said tanks or separator and cap all below ground piping and flowlines, level and grade soil portion of the containment dikes, remove from site all non-soil containment structure construction material, and remediate all hydrocarbon contaminated soil at tank or separator site in accordance with General Rule B-34.

f) Liquid Hydrocarbon Flowlines

- 1) All flowlines used in the production of liquid hydrocarbons, constructed after the effective date of this rule, shall be buried at least twenty-four (24) inches below the ground surface. Flowlines may be exempt from these burial requirements upon approval of the Director, in the following circumstances:
  - A) the topographical features, land uses or ground conditions prevent the efficient burial of flowlines; or
  - B) the suspected presence of numerous old abandoned flowlines, in old producing fields, render the burial of new lines impractical or which will significantly increase the likelihood of causing the discharge of crude oil from the old lines; or
  - C) the terms of the oil and gas lease or surface owner agreement, prohibit the burial of flowlines; or
  - D) the flowlines are installed or placed within the lease road right of way; or
  - E) the flowline from the well to the tank battery is entirely within the confines of the original drilling location.
- 2) All flowlines which cross and are not buried under natural drainage features such as creeks, streams, rivers or intermittent streams or ravines shall be constructed in such fashion as to bridge the drainage feature to protect the flowlines from damage due to lack of adequate support, resulting in potential discharge and violation of the state water quality standards.
- 3) The Director shall have the authority to require active flowlines existing on the effective date of this rule to be replaced, buried or constructed in accordance with subsection (2) above or to require the visible aboveground inactive or abandoned portions of those abandoned flowlines to be removed and the open ends sealed, if the Director finds, based on field observation, that the flowlines constitute a hazard to public safety or can reasonably be expected to cause damage to the environment through leaks, spills or discharges.
- 4) No flowline transporting produced water shall have an outlet valve installed for the purpose of discharging produced water between the place or well of origin and the authorized storage or disposal point. A specialized valve, installed for the purpose of venting trapped air, following flowline maintenance is permissible.
- 5) Any spill, leak or discharge from a flowline shall be reported and remediated in accordance with General Rule B-34.
- g) Natural gas production lines and gathering lines shall be installed and operated in accordance with General Rule D-17 – General Rule Relative to Establishing An Effective

And Efficient Procedure For The Regulation Of Production Field Lines For Natural Gas As Well As Safety Standards or other applicable Commission rules.

h) Power Lines

- 1) All power lines installed after the effective date of this rule, shall be installed in such a manner as to prevent contact by vehicle or pedestrian travel.
- 2) The Director shall have the authority to require power lines existing on the effective date of this rule, to be in compliance with sub-paragraph (h) (1) above, if the Director finds, based on field observation, that the power lines constitute a hazard to public safety.

i) Equipment Storage

- 1) Excess usable or operable production equipment, not integrally related to production activities on the lease, established drilling unit, other unitized production area shall not be stored on any surface property unless written consent from the current surface owner where the production equipment is located, has been granted to the Permit Holder to store such equipment.
- 2) Other trash and debris, including but not limited to unusable, unrepairable junk tanks, treaters, tubulars, injection pumps, pump jacks, and any other general junk equipment or machinery shall not be stored on any surface property except that owned by the Permit Holder. Removed trash and debris shall be disposed in accordance with applicable ADEQ or other state agency regulations.

j) Production Pits

- 1) "Production Pit", as used in this Section, is an earthen surface impoundment, whether a man-made excavation or a diked area which was or currently is used for temporary storage of produced fluids prior to disposal.
- 2) Construction of production pits, other than those pits previously authorized by Commission Orders are prohibited.
- 3) All other production pits in existence as of the effective date of this rule shall cease to be used on the effective date of this rule and closed within 90 days after the effective date of this rule in a manner prescribed by the Commission and in accordance with all applicable state laws and regulations, unless exempted in accordance with subsection (4) below.
- 4) Any production pit in existence as of the effective date of this rule, may not be subject to closure in accordance with subsection (j) (3) above if:
  - A) the pit is no longer used for temporary storage of produced fluids; and

- B) the water quality in the pit is less than 1500 TDS with no visible sheen of oil; and
- C) a written, notarized authorization from the current surface owner has been received by the Director requesting the pit not be closed and demonstrating an acceptable alternative use for the pit; and
- D) in determining not to require the pit be closed, the Director shall:
  - i) review the current location of the pit relative to any ongoing production operations in the area; and
  - ii) review the proposed alternative use relative to public health and safety considerations and potential use for agricultural, recreational or wildlife habitat purposes.
- E) If the Director determines, based on a review of the information submitted by the operator and surface owner, the pit is not exempted, the pit shall be closed, within six (6) months, by the operator, in accordance with subsection (3) above.

k) Leaking Permitted Well

Where any oil and gas reservoir fluids or salt waters or other produced fluids are potentially leaking into the USDW as determined by geologic and field investigation or are leaking onto the surface, through a permitted well transferred to the Permit Holder, the permitted well shall be plugged by the Permit Holder. Pending plugging of the well, all injection wells within a 1/4 mile radius of the leaking drill hole shall be shut-in until the well is plugged.

l) Leaking Previously Plugged Well

Where any oil and gas reservoir fluids or salt waters are potentially leaking into the USDW or to the surface as determined by geologic and field investigation, through a well plugged under applicable Commission rules, the well shall be replugged by the original Permit Holder responsible for plugging the leaking well. If the original Permit Holder is no longer in existence or cannot be located, the well shall be eligible for plugging through the Arkansas Orphan and Abandoned Well Plugging Fund. Pending plugging of the well all injection wells within a 1/4 mile radius of the leaking well shall be shut-in until the leaking well is plugged.



## MARK-UP

### RULE B-34 NOTIFICATION NOTICE OF FIRE, BREAKS, LEAKS, OR BLOW-OUTS AND REMEDIATION OF ASSOCIATED SPILLS OF CRUDE OIL AND PRODUCED WATER

#### a) Definitions for purposes of this rule

- 1) "Permit Holder" shall mean the operator or person, who is duly authorized to develop a lease or unit as owner or through agreement and has the right to drill and produce from any field or reservoir and to appropriate the production for himself or others.

#### b) Notification

- 1) All drillers, owners, operators, Any Permit Holder of an and individuals having an interest in any oil, gas and brine production, UIC Class II, and Class V (brine disposal) wells or an owner or operator of pipelines, or receiving tanks, storage tanks, or other receiving and storage receptacles into which crude oil is produced, received, or stored, or through which oil is piped or transported in flowlines, shall immediately, but not more than twenty-four (24) hours, notify the Commission Regional Office, where the event has occurred, by telephone or facsimile letter giving full details concerning all fires, blow-outs, spills, leaks or discharges in excess of one (1) barrel of crude oil or five (5) barrels of produced water, which occur at these facilities. oil or gas wells or tanks or receptacles, owned, operated or controlled by them or on their property, and all such persons shall immediately report all tanks or receptacles struck by lightning and any other fire which destroys oil or gas, and shall immediately report any breaks or leaks in or from tanks or other receptacles and pipelines from which oil or gas is escaping or has escaped.

- 2) In aAll such reports notices of fires, leaks, or escapes, or other accidents, blowouts, spills, leaks, or discharges provided to the Commission Regional Office of this nature, shall include the name of the operator responsible and the location of the well, tank, receptacles, or line break shall be given by fire, blow-out, spill leak, or discharge by providing the Section, Township, Range and property, lease, or unit, so that the exact location thereof can be readily located on the ground name. Such report shall likewise also specify what emergency steps have been taken or are in progress to remedy the situation reported, and shall detail the quantity (estimated, if no accurate measurement can be obtained, in which case the report shall show that the same is an estimate) of oil or gas lost, destroyed, or permitted to escape. In case any tank or receptacle is permitted to run over, the escape thus occurring shall be reported as in the case of a leak.

The report hereby required as to oil losses shall be necessary only in case such oil loss exceeds twenty five (25) barrels in the aggregate.

- 3) If the reported fire, blow-out, spill, leak, or discharge results in a spill or discharge in excess of one (1) barrel of crude oil and or five (5) barrels of produced water outside the containment, the Permit Holder shall also provide

the following in the required written incident report, on a form prescribed by the Director:

A) the amount of crude oil and produced water spilled or discharged,

B) the areal extent of the spill or discharge,

C) the cause of the spill or discharge, and

D) the proposed remediation efforts.

4) Spills or discharges from interstate and intrastate pipeline (downstream from custody transfer), or from refined product pipelines are not covered by this rule and are under the jurisdiction of the Arkansas Department of Environmental Quality (ADEQ).

5) All crude oil and produced water spills or discharges, regardless of amount, which enter waters of the state as defined in Ark. Code Ann. § 8-4-102 shall be reported immediately to the ADEQ. That portion of the spill which entered waters of the state shall be under the jurisdiction of the ADEQ for remediation and enforcement purposes.

c) Crude Oil Spill Remediation Requirements

1) All crude oil spills that occur after the effective date of this rule, regardless of amount, from wells, flowlines, tanks, pits or containment dikes are subject to this rule.

2) The Permit Holder is required to initiate the following emergency response procedures for all crude oil spills immediately after a spill has occurred, but not more than 24 hours after the spill:

A) Contain spilled crude oil using earthen dikes, booms and other containment measures to minimize the amount of area affected by the spill.

B) If a spill enters surface waters, the spill shall be contained with booms and/or underflow dams and removed as expeditiously as possible. Further remediation requirements shall be determined by ADEQ in accordance with sub-paragraph (a) (5) above.

C) The cause of spill shall be repaired immediately.

D) Impounded free oil shall be picked up and put in lease storage tanks or removed from the site and recycled.

- 3) Remaining oil on the land surface shall be removed using absorbent material, which shall be handled as follows:
- A) All non-organic/non-biodegradable absorbent materials shall be removed from the site and disposed of at an ADEQ permitted waste treatment or disposal facility or other disposal options as allowed by applicable state law or regulation.
  - B) On-site disposal of organic/biodegradable absorbent materials, such as straw and peat moss, may be disposed through land spreading over the area affected by the initial spill and remediated in accordance with sub-paragraphs (4) (A) thru (D) below.
- 4) Contaminated soil area affected by a spill may be remediated in place and shall, within 10 days, at a minimum be:
- A) fertilized with 13-13-13 fertilizer or an amount of other acceptable fertilizer sufficient to treat the soil with 0.5 lbs per square yard; and
  - B) limed with sufficient agricultural grade lime over the affected area in order to maintain a pH of between 6-8; if the pH of the soil/oil mixture is less than 6, additional lime shall be incorporated to increase pH above 6; and
  - C) tilled to a depth of at least 4 inches but no greater than 12 inches to create a soil and crude oil mixture that contains less than 5% total petroleum hydrocarbon (TPH) following the completion of the initial tilling; and
  - D) watered to maintain soil moisture sufficient to promote plant growth (if extremely dry soil conditions exist); and
  - E) stabilized to minimize erosion and run-off of stormwater to prevent violation of applicable water quality standards.
  - F) If the soil in the affected area is frozen or previously saturated due to rain or snow melt, prohibiting compliance with sub-paragraphs (A) thru (E) above, the Permit Holder shall stabilize the area to prevent any surface run-off of crude oil from leaving the affected area until conditions permit compliance with sub-paragraphs (A) thru (E) above.
  - G) The soil affected by the spill must contain less than 1% TPH within 12 months after the date of the spill.

- H) The Director may require additional remediation action to be taken by the operator, which may include flushing of the area with freshwater (which shall be collected and disposed in a UIC Class II well), the addition of organic material (e.g., peat moss, straw), chemical treatment, additional disking of the soil or soil and absorbent material removal if the soil and/or absorbent material within the spill area cannot meet the TPH standard specified in sub-paragraph (c)(4)(C) above.
  - I) Contaminated soils removed from the site for off-site disposal shall be disposed of at an Arkansas Department of Environmental Quality permitted landfill permitted to receive such waste other ADEQ permitted surface waste treatment or disposal facility or as required by applicable state law or regulation.
- 5) If a spill enters a public road ditch, visible crude oil-contaminated soil shall be removed from the roadside ditch and:
- A) removed from the site in accordance with sub-paragraph (c)(4)(I) above; or
  - B) incorporated into the non-road ditch area of the spill and remediated in accordance with sub-paragraph (c)(4)(A) thru (E) above.
- 6) The Permit Holder shall be required to submit on request, or within 15 days after the spill occurred, on a form prescribed by the Director, the following information:
- A) a topographic map showing the areal extent of the spill and the proximity of surface waters;
  - B) the type of soil and current land use;
  - C) the TPH content in the spill area;
  - D) explanation of the cause of the spill, and planned efforts to prevent and minimize the effects of future spills at the site.
  - E) Additional reports are required each 90 days until the spill remediation is completed and approved by the Director.
- 7) The Commission after notice and hearing shall have the authority to amend the above remediation methodology, or approve alternative remediation methodologies if those methods achieve the same or higher standard of spill remediation.

d) Produced Water Spill Remediation Requirements

- 1) All spills of produced water, which occur after the effective date of this rule, from wells, flowlines, pits, tanks or containment dikes, shall immediately, but not more than 24 hours be contained using earthen dikes and other containment measures to minimize the amount of area affected by the spill.
- 2) All impounded produced water shall be picked up and removed from the site for disposal into an approved Class II UIC well, or recycled through the Permit Holder's production process.
- 3) The affected area shall be limed with at least 50 lbs. of agricultural grade lime per 100 square feet of affected area and tilled to a depth of at least 4 inches.
- 4) Based on the quantity and areal extent of the produced water spill, the proximity of the spill area to surface water features, the nature of the soil and land use of the area and any impact to public safety, the Director may require additional remediation action to be taken by the Permit Holder. These additional actions may include flushing of the area with freshwater (which shall be collected and disposed in a permitted Class II well), the addition of organic material (e.g., peat moss, hay, straw), additional chemical treatment, additional disking the soil, or soil removal. The operator shall be required to continue these corrective actions until the spill remediation efforts are deemed complete by the Director based on site specific conditions.

## MARK-UP

### **RULE B-40 - AUTHORIZATION FOR DIRECTOR OF PRODUCTION AND CONSERVATION TO ADMINISTRATIVELY APPROVE APPLICATIONS FOR EXCEPTIONAL WELL LOCATIONS.**

- a) The Director of Production and Conservation or his designee is authorized to issue a Drilling Permit for a well proposed to be drilled, is being drilled, or has been drilled at a location within an established drilling and production unit, which fails to conform to the setback distance requirements, as measured from the approximate center of the wellbore to from unit boundary lines, under applicable field rules or Commission general rules. This rule is only applicable: to vertically or directionally drilled wells and does not apply to horizontally drilled wells or any type of well drilled as a wildcat well, as defined in General Rule B-3, or for wells drilled in Exploratory Units established by Commission order.
- (1) To dry gas wells drilled vertically or directionally and does not apply to any type of dry gas well drilled as a wildcat well, as defined in General Rule B-3, or for dry gas wells drilled in Exploratory Units established by Commission order, or;
- (2) To oil or gas condensate wells drilled in standard drilling units from which the well setbacks are defined by distance from a drilling unit boundary defined by a legal land description and does not apply to drilling units where well setbacks are established by other methods, or for wildcat wells or for wells in Exploratory Units established by the Commission, or;
- (3) To oil wells located in uncontrolled fields where the standard well setback as specified in General Rule B-3, apply to lease lines rather than drilling unit lines.
- b) In each such instance in which a permit is issued, except in uncontrolled fields which are not subject to an allowable, a reduction in the allowable to which such well would otherwise be entitled, under the provisions of the applicable field rules or other general well spacing rules, shall be assessed by multiplying a fraction, the numerator of which shall be the distance expressed in feet between the location of such proposed well and the boundary of the drilling and production unit in which the well is to be drilled and the denominator of which shall be the distance expressed in feet at which wells within such field and/or drilling unit are otherwise required to be located. If the proposed location encroaches upon more than one boundary of said unit, then the penalty to be imposed upon the production allowable shall be cumulative of the penalties from both boundaries as described in Section (c) below.
- c) If the proposed location encroaches upon more that one boundary as specified in section (b) above, the reduction in the allowable shall be calculated as follows:

First boundary encroachment expressed as:

setback footage specified by rule (minus)(-) actual footage of proposed well from unit boundary (divided by)(÷)

setback footage specified by rule, plus (+)

Second boundary encroachment expressed as:

setback footage specified by rule (minus)(-) actual footage of proposed well from unit boundary (divided by)(÷)

setback footage specified by rule = penalty factor

Then:

| penalty factor (x) full calculated allowable (MCF or bbl) = amount allowable reduced (MCF or bbl)

Then:

| full calculated allowable (MCF or bbl) (minus)(-) amount allowable reduced (MCF or bbl) = production allowable (MCF or bbl)

- d) Each such application for an exceptional location shall be submitted on a form prescribed by the Director of Production and Conservation, accompanied by an application fee of \$500.00 and include the name and address of each owner, as defined in A.C.A. § 15-72-102(9), within the unit in which the proposed well is to be drilled and within the units offsetting the boundary line or lines, or in the case of wells in uncontrolled fields within the boundaries of mineral lease lines and the offsetting lease(s), which shall be encroached upon by the proposed exceptional well location.
- f) Concurrently with the filing of an application in accordance with this rule, the applicant shall send to each owner specified in Section (d) above a notice of the application filing and verify such mailing by affidavit, setting out the names and addresses of all owners and the date(s) of mailing.
- | g) Any owner noticed in accordance with section ~~(e)~~(d) shall have the right to object to the granting of such application within fifteen (15) days after the receipt of the application by the Commission. Each objection must be made in writing and filed with the Director. If a timely written objection is filed as herein provided, then the applicant shall be promptly furnished a copy and such application and the objection shall be referred to the Commission for determination at the next regular hearing.
- h) An application may be referred to the Commission for determination when the Director: (1) deems the penalty to be imposed upon the allowable for such well, calculated as herein provided, to be inadequate to offset any advantage which the applicant may have over any other producer, as defined in A.C.A. § 15-72-102(8), by reason of the drilling of the well at such exceptional location, or (2) deems it necessary that the Commission make such determination for the purpose of protecting correlative rights of all parties. Promptly upon such determination, and not later than fifteen (15) days after receipt of the application, the Director shall give the applicant written notice, citing the reason(s) for denial of the application under this rule and the referral to the full Commission for determination.
- i) Applications for exceptional locations resulting from directional drilling shall be considered for administrative approval in accordance with this rule, provided, that no allowable shall be authorized until the Commission has been furnished a bottom hole

directional survey for each common source of supply for which an allowable is requested. In all such cases where directional surveys are made available, the distance, of the mid-point perforations for each common source of supply in a directional well, from the unit boundary shall be used in calculating the allowable.

- j) If the Director has not notified the applicant of the determination to refer the application to the Commission within the fifteen (15) day period in accordance with the foregoing provisions, and if no objection is received at the office of the Commission within the fifteen (15) days as provided for in section (f), the application shall be approved and a Drilling Permit issued.



**GENERAL RULE B-43**  
**ESTABLISHMENT OF DRILLING UNITS FOR GAS PRODUCTION FROM**  
**CONVENTIONAL AND UNCONVENTIONAL SOURCES OF SUPPLY OCCURRING IN**  
**CERTAIN PROSPECTIVE AREAS NOT COVERED BY FIELD RULES**

- (a) For purposes of this rule, unconventional sources of supply shall mean those common sources of supply that are identified as the Fayetteville Shale, the Moorefield Shale, and the Chattanooga Shale Formations, or their stratigraphic shale equivalents, as described in published stratigraphic nomenclature recognized by the Arkansas Geological ~~Commission~~Survey or the United States Geological Survey.
- (b) For purposes of this rule, conventional sources of supply shall mean all common sources of supply that are not defined as unconventional sources of supply in section (a) above.
- (c) This rule is applicable to all occurrences of conventional and unconventional sources of supply in Arkansas, Cleburne, Conway, Cross, Faulkner, Independence, Jackson, Lee, Lonoke, Monroe, Phillips, Prairie, St. Francis, Van Buren, White and Woodruff Counties, Arkansas and shall be called the "section (c) lands". The development of the conventional and unconventional sources of supply within the section (c) lands shall be subject to the provisions of this rule.
- (d) This rule is further applicable to all occurrences of unconventional sources of supply in Crawford, Franklin, Johnson, and Pope Counties, Arkansas and shall be called the "section (d) lands". The development of the unconventional sources of supply within the section (d) lands shall be subject to the provisions of this rule. For purposes of this rule, the section (d) lands and the section (c) lands may collectively be referred to as the "covered lands".
- (e) All Commission approved Fayetteville Shale and non-Fayetteville Shale fields that are situated within the section (c) lands and that are in existence on the date this rule is adopted (collectively, the "existing fields"), are abolished and the lands heretofore included within the existing fields are included within the section (c) lands governed by this rule. Further, all amendments that added the Fayetteville Shale Formation to previously established fields for conventional sources of supply occurring in the section (d) lands are abolished and continuing development of the Fayetteville Shale and other unconventional sources of supply in these lands shall be governed by the provisions of this rule. All existing individual drilling units however, contained within the abolished fields shall remain intact.
- (f) All drilling units established for conventional and unconventional sources of supply within the section (c) lands and all drilling units established for unconventional sources of supply within the section (d) lands shall be comprised of regular governmental sections with an area of approximately 640 acres in size. Each drilling unit shall be characterized as either an "exploratory drilling unit" or an "established drilling unit". An "exploratory drilling unit" shall be defined as any drilling unit that is not an established drilling unit. An "established drilling unit" shall be defined as any drilling unit that contains a well that has been drilled and completed in a conventional or unconventional source of supply (a "subject well"), and for which the operator or other person responsible for the conduct of the drilling operation has filed, with the Commission, ~~the all appropriate well and completion reports~~documents in accordance with General Rule B-5, ~~and been issued a certificate of compliance.~~ Upon the filing of the required well and completion reports for a subject well and the issuance of a certificate of compliance with respect thereto, the exploratory drilling unit upon which the subject well is located and all contiguous governmental sections shall be automatically reclassified as established drilling units.

- (g) The filing of an application to integrate separately owned tracts within an exploratory drilling unit, as defined in Section (f) above and as contemplated by A.C.A. § 15-72-302(e), is permissible, provided that one or more persons who collectively own at least an undivided fifty percent (50%) interest in the right to drill and produce oil or gas, or both, from the total acreage assigned to such exploratory drilling unit ~~agree~~—support the filing of the application. In determining who shall be designated as the operator of the exploratory drilling unit that is being integrated, the Commission shall apply the following criteria:
- 1) Each integration application shall contain a statement that the applicant has sent written notice of its application to integrate the drilling unit to all working interest owners of record within such drilling unit. This notice shall contain a well proposal and AFE for the initial well and may be sent at the same time the integration application is filed.
  - 2) If any non-applicant working interest owner in the drilling unit owns, or has the written support of one or more working interest owners that own, separately or together, at least a fifty percent (50%) working interest in the drilling unit, such non-applicant working interest owner may (i) object to the applicant being named operator (a “section (g) operator challenge”) or (ii) file a competing integration application (a “section (g) competing application”) that challenges any aspect of the original integration application for such drilling unit. Any contested matter that is limited to a section (g) operator challenge shall be heard at the Commission hearing that was originally scheduled for such integration application. Any contested matter that involves the filing of a section (g) competing application shall be postponed until the next month’s regularly scheduled Commission hearing if postponement is requested by either competing applicant.
  - 3) If a party desiring to be named operator of a drilling unit is supported by a majority-in-interest of the total working interest ownership in the drilling unit (the “majority owner”), the majority owner shall be designated unit operator.
  - 4) In the event two parties desiring to be named operator own, or have the written support of one or more working interest owners that own, exactly, an undivided 50% share of the drilling unit and either a section (g) operator challenge is submitted or a section (g) competing application is filed, operatorship shall be determined by the Commission, based on the factors it deems relevant and the evidence submitted by the parties or as otherwise provided by subsequent rule.
  - 5) If the person designated as operator by the Commission in the adjudication of a section (g) operator challenge or a section (g) competing application does not commence actual drilling operations on the drilling unit within the twelve (12) month period set out in the integration order, such operator shall not be entitled to be designated as operator under the subsequent integration of such drilling unit unless (i) the operator’s failure to commence such drilling operations was due to force majeure, or (ii) a majority-in-interest of the total working interest ownership in the drilling unit (excluding such designated operator) support such operator.
- (h) The filing of an application to integrate separately owned tracts within an established drilling unit, as defined in Section (f) above and as contemplated by A.C.A. § 15-72-303 is permissible, without a minimum acreage requirement, provided that one or more persons owning an interest in the right to drill and produce oil or gas, or both, from the total acreage assigned to such established drilling unit requests such integration. In determining who shall be designated as the

operator of the established drilling unit that is being integrated, the Commission shall apply the following criteria:

- 1) Each integration application shall contain a statement that the applicant has sent written notice of its application to integrate the drilling unit to all working interest owners of record within such drilling unit. This notice shall contain a well proposal and AFE for the initial well and may be sent at the same time the integration application is filed.
- 2) Any non-applicant working interest owner in the drilling unit may object to the applicant being named operator (a "section (h) operator challenge"). In addition, if an objecting party owns, or has the written support of one or more working interest owners that own, separately or together, a larger percentage working interest in the drilling unit than the applicant, such objecting party may file a competing integration application (a "section (h) competing application") that challenges any aspect of the original integration application for such drilling unit. Any contested matter that is limited to a section (h) operator challenge shall be heard at the Commission hearing that was originally scheduled for such integration application. Any contested matter that involves the filing of a section (h) competing application shall be postponed until the next month's regularly scheduled Commission hearing if postponement is requested by either competing applicant.
- 3) If a party desiring to be named operator of a drilling unit is a majority owner (as defined in subsection (g)(3) above), the majority owner shall be designated unit operator.
- 4) If a party desiring to be named operator of a drilling unit is not a majority owner, but is supported by the largest percentage interest of the total working interest ownership in the drilling unit (the "plurality owner"), there shall be a rebuttable presumption that the plurality owner shall be designated unit operator. If a section (h) operator challenge to a plurality owner being designated unit operator is submitted by a party that owns, or has the written support of one or more owners that own, separately or together, the next largest percentage share of the working interest ownership in the drilling unit (the "minority owner"), the Commission may designate the minority owner operator if the minority owner is able to show that, based on the factors the Commission deems relevant and the evidence submitted by the parties, the Commission should designate the minority owner as unit operator.
- 5) If two or more parties that desire to be named operator own, or have the support of one or more working interest owners that own, separately or together, the same working interest ownership in the drilling unit, operatorship shall be determined by the Commission, based on the factors it deems relevant and the evidence submitted by the parties or as otherwise provided by subsequent rule.
- 6) If the person designated as operator by the Commission in the adjudication of a section (h) operator challenge or a section (h) competing application does not commence actual drilling operations on the drilling unit within the twelve (12) month period set out in the integration order, such operator shall not be entitled to be designated operator under the subsequent integration of such drilling unit unless (i) the original operator's failure to commence drilling operations on the initial well was due to force majeure, or (ii) a majority-in-interest of the total working interest ownership in the drilling unit (excluding the original operator) support the original operator.

- | (i) The well spacing for wells drilled in ~~established~~ drilling units for unconventional sources of supply within the covered lands are as follows:
  - 1) Each well location (as defined in Section (a)(2) of General Rule B-3) shall be at least 560 feet from any drilling unit boundary line;
  - 2) Each well location (as defined in Section (a)(2) of General Rule B-3) shall be at least 560 feet from other well locations within an established drilling unit;
  - 3) No more than 16 wells may be drilled per 640 acres for each separate unconventional source of supply within an established drilling unit; and
  - 4) Applications for exceptions to these well location provisions, relative to a drilling unit boundary or other location in a common source of supply, may be brought before the Commission.
  
- | (j) The well spacing for wells drilled in ~~established~~ drilling units for conventional sources of supply within the section (c) lands are as follows:
  - 1) Only a single well completion will be permitted to produce from each separate conventional source of supply within each established drilling unit, unless additional completions are approved in accordance with General Rule D-19;
  - 2) Each well location (as defined in Section (a) 2) of General Rule B-3) shall be at least 1120 feet from any drilling unit boundary line;
  - | 3) Well completions located closer than 1120 feet ~~but greater than 560 feet~~ from all established drilling unit boundaries, shall be subject to approval in accordance with General Rule B-40; and
  - 4) Applications for exceptions to these well location provisions, relative to a drilling unit boundary or other location in a common source of supply, may be brought before the Commission.
  
- (k) The casing programs for all wells drilled in exploratory and established drilling units established by this rule and occurring in the covered lands specified by this rule shall be in accordance with General Rule B- 15.
  
- (l) Wells completed in and producing from only conventional sources of supply, as defined in Section (b), shall be subject to the testing and production allowable provisions of General Rule D-16. Wells completed in and producing from only unconventional sources of supply, as defined in Section (a), shall be subject to the initial and annual testing and test reporting provisions of General Rule D-16, except that the initial test shall be witnessed at the discretion of the Director, the annual tests may be performed without the presence of a Commission representative and there shall be no production allowable established for wells producing from unconventional sources of supply located within the covered lands.
  
- (m) The commingling of completions for unconventional sources of supply within each well situated on an established drilling unit, shall be subject to the provisions and approval process outlined in General Rule D-18. If an unconventional source of supply is approved to be commingled with a

conventional source of supply within a well situated on an established drilling unit, the well shall be subject to the production allowable provisions of General Rule D-16.

- (n) The reporting requirements of General Rule B-5 shall apply to all wells subject to the provisions of this rule. In addition, the operator of each such well shall be required to file monthly gas production reports, on a Form approved by the Director, no later than 45 days after the last day of each month.
- (o) The Commission specifically retains jurisdiction to consider applications brought before the Commission from a majority in interest of working interest owners in two or more adjoining ~~established~~ drilling units seeking the authority to drill, produce and share the costs of and the proceeds of production from one or more separately metered wells that extend across or encroach upon drilling unit boundaries and that are drilled and completed in one or more unconventional sources of supply within the covered lands. All such applications shall contain a proposed agreement on the formula for the sharing of costs, production and royalty from the affected drilling units.
  - 1) However, if the majority in interest of working interest owners agree to share a proposed well between two or more adjoining drilling units, which have been previously integrated, utilizing the below methodology for sharing of costs, production and royalty among the affected drilling units, the Director or his designee is authorized to approve the application administratively. The method for sharing the costs of and the proceeds of production from one or more separately metered wells shall be based on acreage allocation as follows:
    - A. An area measured 560 feet along and on both sides of the entire length of the horizontal perforated section of the well, and including an area formed by a 560 feet radius from the beginning point of the perforated interval, and a 560 feet radius from the ending point of the perforated interval shall be calculated for each such separately metered well (the "calculated area").
    - B. Each calculated area shall be allocated and assigned to each drilling unit according to that portion of the calculated area occurring within each drilling unit.
  - 2) Each such application for utilizing the above methodology shall be submitted on a form prescribed by the Director of Production and Conservation, accompanied by an application fee of \$500.00 and include the name and address of each owner, as defined in A.C.A. § 15-72-102(9), within each of the drilling units in which the proposed well is to be drilled and/or completed.
  - 3) Concurrently with the filing of an application utilizing the above methodology, the applicant shall send to each owner specified in subsection (o)(2) above a notice of the application filing and verify such mailing by affidavit, setting out the names and addresses of all owners and the date(s) of mailing.
  - 4) Any owner noticed in accordance with subsection (o)(3) above shall have the right to object to the granting of such application within fifteen (15) days after the receipt of the application by the Commission. Each objection must be made in writing and filed with the Director. If a timely written objection is filed as herein provided, then the applicant

shall be promptly furnished a copy and such application and the objection shall be referred to the Commission for determination at the next regular hearing.

- 5) An application may be referred to the Commission for determination when the Director deems it necessary that the Commission make such determination for the purpose of protecting correlative rights of all parties. Promptly upon such determination, and not later than fifteen (15) days after receipt of the application, the Director shall give the applicant written notice, citing the reason(s) for denial of the application under this rule and the referral to the full Commission for determination.
  - 6) If the Director has not notified the applicant of the determination to refer the application to the Commission within the fifteen (15) day period in accordance with the foregoing provisions, and if no objection is received at the office of the Commission within the fifteen (15) days as provided for in subsection (o)(4), the application shall be approved and a drilling permit issued.
  - 7) Upon receipt of the drilling permit, the applicant shall give the other working interest parties written notice that the drilling permit has been issued. The working interest parties, who have not previously made an election, shall have 15 days after receipt of said notice within which to make an election to participate in the well or be deemed as electing non-consent and subject to the non-consent penalty set out in the existing Joint Operating Agreement(s) covering their respective drilling unit or units.
  - 8) Following completion of the well and prior to the issuance by the Commission of the Certificate of Compliance to commence production, the final location of the perforated interval shall be submitted to the Commission to verify the proposed portion of the calculated area occurring within each drilling unit as specified in subsection (o)(1) above.
- (p) The Commission shall retain jurisdiction to consider applications, brought before the Commission, from a majority in interest of working interest owners in two or more adjoining governmental sections seeking the authority to combine such adjoining governmental sections into one drilling unit for the purpose of developing one or more unconventional sources of supply. In any such multi-section drilling unit, production shall be allocated to each tract therein in the same proportion that each tract bears to the total acreage within such drilling unit.
- (q) The Commission shall retain jurisdiction to consider applications, brought before the Commission, from a majority in interest of working interest owners in a drilling unit seeking the authority to omit any lands from such drilling unit that are owned by a governmental entity and for which it can be demonstrated that such governmental entity has failed or refused to make such lands available for leasing.

## MARK - UP

### **RULE D-17 - GENERAL RULE RELATIVE TO ESTABLISHING AN EFFECTIVE AND EFFICIENT PROCEDURE FOR THE REGULATION OF PRODUCTION FIELD LINES FOR NATURAL GAS AS WELL AS SAFETY STANDARDS. GATHERING LINES**

#### APPLICATION:

- (1) ~~The operator of every gas well that is located within a populated area shall comply with this rule.~~
- (2) ~~This rule shall not apply to wells and the facilities used in the production process outside populated areas.~~

#### DEFINITIONS:

- (1) ~~Gas Well shall mean every gas well for which a completion or recompletion report is required by General Rules and Regulations of this Commission.~~
- (2) ~~Populated Areas shall mean areas within the limits of any incorporated or unincorporated city, town or village or any designated residential or commercial area such as a subdivision, business or shopping center, or community development.~~
- (3) ~~Production process shall mean the extraction of gas from the geological source of supply from which the gas originates to the surface of the earth, thence through the lines and equipment used to treat, compress and measure the gas between the wellhead and the meter where it is either sold or delivered to a custodian other than the operator for gathering and transport to a place of sale, sometimes called "custodial transfer meter".~~
- (4) ~~Flow Line shall mean the pipeline that connects the wellhead to the inlet valve of the first point of separation of liquids from dry gas.~~
- (5) ~~Production Field Line shall mean the line(s) and facility or facilities between the end of the flow line and the custodial transfer meter.~~
- (6) ~~MAOP shall mean "maximum allowable operating pressure", i.e., the maximum pressure at which a section of pipeline can be operated.~~

#### MINIMUM SAFETY STANDARDS:

~~All wells and production facilities to which this rule applies shall meet the following specifications:~~

- (1) ~~Materials used for pipe and other facilities shall be chemically compatible with the fluid(s) if any, to be handled.~~
  - A)
- (2) ~~All production field lines shall be pressure tested to a minimum of 125% of MAOP for at least 8 hours upon installation.~~

- ~~(3) All buried steel production field lines operating above 100 ppsi shall be coated and wrapped.~~
- ~~(4) Buried steel production field lines shall be cathodically protected in accordance with National Association of Corrosion Engineers (NACE) Recommended Procedure 0169-92.~~
- ~~(5) All lines shall be protected from over pressure by installation of a pressure limiting device.~~
- ~~(6) One or more blow down valves shall be installed at a non-hazardous location on each segment of a pipeline that can be isolated by valves. Check valves shall be installed where practical.~~
- ~~(7) All lines shall be buried to 36 inches of depth in soil or 24 inches in consolidated rock and those in public road or railroad right-of-way shall be cased or otherwise protected by additional burial, use of heavy wall pipe or protective cap.~~
- ~~(8) Pipeline marker signs shall be installed at all road and railroad crossings and other locations deemed appropriate by the operator or the Commission. Marker signs shall inform the public of the name of the operator and its twenty-four (24) hour telephone number.~~
- ~~Buried lines shall also be identified with a "call before digging" placard with the State One-Call System telephone number on or below the marker sign.~~

~~— Every operator shall be a member of the "Arkansas One-Call System".~~

#### ~~OPERATION, MAINTENANCE AND EMERGENCY.~~

~~— An operation, maintenance, inspection and emergency plan shall be implemented and files shall be created for production facilities subject to this rule.~~

#### ~~EXISTING FACILITIES~~

~~— Facilities in existence on the effective date of this rule shall be exempt from these requirements except the requirements of C.1, 5 and 8.~~

#### a) Definitions

- ~~1) Jurisdictional Natural Gas Gathering Line means those natural gas gathering pipelines which are defined in Federal Regulation 49 CFR Part 192, Minimum Federal Safety Standards for Transportation of natural Gas by Pipeline.~~
- ~~2) Non-Jurisdictional Natural Gas Gathering Line means: those natural gas pipelines not under jurisdiction of Federal Regulation 49 CFR Part 192 which transports natural gas by pipeline from the well to the custodial transfer meter.~~
- ~~3) Gathering Line Operator means any entity who owns and is responsible for the construction and operation of the natural gas gathering line or system.~~
- ~~1) Gathering Line Operator means any person who owns and is responsible for the construction and operation of the natural gas gathering line or system.~~



- 2) Jurisdictional Natural Gas Gathering Line means any Onshore Gathering Line which is regulated as a "Type B regulated Onshore gathering line" under Federal Regulation 49 CFR Part 192, as determined in accordance with Section 192.8(b) thereof.
- 3) Non- Jurisdictional Natural Gas Gathering Line means: any natural gas pipeline, including but not limited to flowlines, production lines, or gathering lines, not under jurisdiction of Federal Regulation 49 CFR Part 192 which transports natural gas by pipeline from the well to the custodial transfer meter.
- 4) Perennial Stream means: a stream that has flowing water year-round during a typical year, the water table is located above the stream bed for most of the year, groundwater is the primary source of water for stream flow, and runoff from rainfall is a supplemental source of water for stream flow.

b) Applicability

Every Gathering Line Operator transporting natural gas by pipeline from the well to the custodial transfer meter is subject to the applicable provisions of this rule. Natural gas pipelines from the well, to a custodial transfer meter located on the well pad, are exempt from the provisions of this rule.

c) General Requirements for all Jurisdictional and Non-Jurisdictional gathering lines:

- (1) Each operator of gathering line (5) shall apply, on a form prescribed by the Director, for an initial statewide permit to construct and operate a natural gas gathering line or system. The initial permit application shall contain at a minimum the following:
  - A) Name, address and contact information for the gathering line operator;
  - B) Map, or other media acceptable to the Director, showing the location of all natural gas gathering lines or systems from the producing wells through any processing or treating facility, and to the custodial transfer meter;
  - C) A determination as to what gathering lines are jurisdictional;
  - D) Submission of the applicable permit fee as follows:
    - (i) less than 50 miles of gathering line - \$500.00
    - (ii) 50 miles to less than 100 miles of gathering line - \$1,500.00
    - (iii) 10+10 miles to less than 250 miles of gathering line - \$2,500.00
    - (iv) greater than 250 miles of gathering lines - \$5,000.00
- (2) Each operator shall be required to submit an annual permit renewal by January 31 of each year.

- (3) The renewal permit shall include a revised system map showing any new gathering line additions constructed during the previous year, an annual report on a form prescribed by the Director, along with a permit renewal fee in accordance with paragraph (c)(1)(D) above. The renewal permit shall also contain the operator's determination as to which lines are jurisdictional.
- (4) Each operator shall submit a Notice of Construction, on a form prescribed by the Director, prior to commencing construction, for each segment or project length of gathering line constructed during the year. The Notice shall indicate the location and extent of the gathering lines to be constructed.
- (5) Each operator shall submit a Notice of Incident, on a form prescribed by the Director ~~for non-jurisdictional lines, or on an applicable federal form for jurisdictional lines, for all natural gas gathering line incidents, as defined in 49 CFR Part 191.3 each leak break or line repair, which results in the loss of more than \$5,000, within 30 days of each incident.~~
- (6) All gathering lines crossing ~~any~~ streams ~~or stream bed~~ shall comply with applicable state and federal rules and regulations. ~~Additionally, Any~~ ~~understream~~ crossing ~~(boring) of perennial streams~~ shall maintain a minimum of ~~fifty~~ ~~40~~(50) feet of undisturbed stream bank for the protection of the stream.
- (7) Each operator shall place and maintain appropriate signage at all gathering line crossings of public roads and railroads in accordance with 49 CFR Part 192.707 (d)(1) and (2).

d) Requirements for Jurisdictional Gathering Lines

- (1) The enforceable date for compliance with all requirements of the sub-paragraph shall be those dates set forth in 49 CFR Subpart 192.9.
- (2) All **Type B** jurisdictional gathering lines shall be in compliance with the applicable general requirements contained in Federal Regulations 49 CFR Part 192 Subpart A.
- (3) If a line is new, replaced, relocated, or otherwise changed, the design, installation, construction, initial inspection and initial testing must be in accordance with requirements of 49 CFR Part 192 applicable to transmission lines.
- (4) All jurisdictional gathering lines shall be operated in conformance with operating standards specified in Federal Regulations 49 CFR Part 192 Subpart L 192.614 and 192.616 and 192.619.
- (5) All jurisdictional gathering lines shall be identified in accordance with Federal Regulations 49 CFR Part 192 Subpart M 192.707.
- (6) All jurisdictional metallic gathering lines shall control corrosion in accordance with the applicable provisions of Federal Regulation 49CFR Part 192 Subpart I.
- (7) All jurisdictional gathering lines shall be subject to the applicable enforcement provisions of Federal Regulation 49 CFR Part 190.

- e) Requirements for Jurisdictional and Non-Jurisdictional Gathering Lines Containing 100 PPM or Greater Hydrogen Sulfide.
- (1) Said lines shall be in compliance with the applicable general requirements contained in Federal Regulations 49 CFR Part 192 Subpart A.
  - (2) If a line is new, replaced, relocated, or otherwise changed, the design, installation, construction, initial inspection and initial testing must be in accordance with requirements of 49 CFR Part 192 applicable to transmission lines.
  - (3) Said lines shall be operated in conformance with operating standards specified in Federal Regulations 49 CFR Part 192 Subpart L.
  - (4) Said lines shall be identified in accordance with Federal Regulations 49 CFR Part 192 Subpart M.
  - (5) Said metallic lines shall control corrosion in accordance with the applicable provisions of Federal Regulation 49CFR Part 192 Subpart I.

**RULE A-1 APPLICATION OF RULES, REGULATIONS, AND ORDERS**

- a) The following rules and regulations have been adopted by the Oil and Gas Commission in accordance with applicable state law requirements and are General Rules of state-wide application, applying to the conservation and prevention of waste of crude oil and natural gas in the State of Arkansas and protection of the vested, co-equal or correlative rights of owners of crude oil and natural gas. Any specific provisions of Special rules, regulations and orders have been and will be issued when required and shall prevail as against general provisions of rules, regulations and orders if in conflict therewith.
  
- b) No order, special rule or regulation of the Commission shall modify, waive, amend, or otherwise alter the provisions of a General Rules unless the General Rule provides a specific provision to do so.

## **RULE A-2 GENERAL HEARING PROCEDURES**

~~No special rule, regulation or order, including change, renewal or extension thereof, shall, in the absence of an emergency, be made by the Commission under the provisions of Rule A-1 except after a public hearing upon at least ten (10) days notice prior to the date of said hearing, but not more than thirty (30) days prior thereto, which notice shall be given in the manner and form as may be prescribed by the Commission. Such public hearing shall be held at such time, place, and in such manner as may be prescribed by the Commission, and any person having any interest in the subject matter of the hearing shall be entitled to be heard.~~

### **a) Execution and Filing**

- 1) All applications, except for applications filed by the Director, shall be in writing and state the interests of the application and the general nature of the order requested. Fourteen copies of the application, including exhibits, shall be filed with the Commission Director's office located in Little Rock, Arkansas ("Director's Office"). The application shall be deemed filed when it is received by the Director's Office.
- 2) All fourteen (14) copies of the applications, including exhibits, except for those filed by the Director, must be received in the Directors Office at least twenty (20) days prior to the first day of regularly scheduled hearing. If the applicant or his/her representative files an electronic version (a .pdf file labeled by the assigned docket number) of the application, including exhibits, on an electronic storage device approved by the Director a minimum of twenty (20) days prior to the first day of the regularly scheduled hearing, the fourteen (14) copies of the applications, including exhibits must be received in the Director's office eighteen (18) days prior to the first day of the regularly scheduled hearing.
- 3) Every application shall be signed by the applicant or his/her representative and his/her address shall be stated thereon. The signature of the applicant or his/her representative constitutes a certificate by him/her that he/she has read the petition and that to the best of his/her knowledge, information and belief there is good ground to support the same.
- 4) Unless otherwise provided by General Rule of the Commission, each application, except for applications filed by the Director, shall be accompanied by a five hundred dollar (\$500.00) filing fee made payable to the Arkansas Oil and Gas Commission.
- 5) The applicant shall also submit a check payable to the U.S. Postal Service in an amount approved by the Commission, not to exceed two dollars (\$2.00) per name of persons named in the application, whose address are known as well as addresses for other persons that the applicant seeks to provide a copy of the order. The applicant shall also provide mailing labels for each person named in the

application whose address is known, as well as any other person that the applicant seeks to provide a copy of the order. If the address of the person is unknown, the Applicant shall provide a statement to that affect. All mailing labels shall be provided within three (3) days after the date of the hearing.

- 6) If after the application is filed, and prior to the hearing date, the Director finds the application deficient relative to the requirements of subsections a) 1) through 4) above, the Director shall return the application to the applicant with a statement as to the deficiencies.
- 7) If after the application is filed, and prior to the hearing date, the Director determines that additional facts, data, records, or other information is necessary to fully evaluate the application, the Director shall require the applicant to submit such necessary facts, data, records or other information.

b) Notice of Hearing

- 1) The Applicant shall prepare a notice of hearing which shall be issued in the name of the Arkansas Oil and Gas Commission. Such notice shall include a statement pertaining to the legal authority for the hearing; the name of the applicant; the legal description of the property or unit; a statement of the requested action; a listing of interested parties; the time, date and location of the hearing; the Commission assigned docket number; and the contact information of the Commission offices. The notice shall also state that any interested person may file an entry of appearance in the hearing by submitting such entry of appearance in writing to the Hearing Officer or Director, and that thereafter such person shall be deemed a party of record in the proceeding.
- 2) Unless otherwise provided by General Rule of the Commission, the Applicant shall serve such notice in the following manner:
  - A) By mailing such notice by U.S. Postal service, first-class mail, directed to the person(s) named in the application at their last known addresses at least ten (10) days prior to the date of the hearing, but not more than thirty (30) days prior to the date of the hearing; and
  - B) By publication of such notice for at least one (1) day, with the notice appearing at least ten (10) days prior to the date of the hearing, but not more than thirty (30) days prior to the date of the hearing, in the newspaper of general circulation published in each county containing some portion of the land identified in the application.

c) Emergency Hearings

In the event an emergency is found to exist by the Commission which in its judgment requires the making, changing, renewal or extension of an order or field rule, without first having a hearing, such emergency order or field rule shall have the same validity as if a hearing with respect to the same had been held after due notice. The emergency order or field rule permitted by this section shall remain in force no longer than ten days from its effective date, and, in any event, it shall expire when the order or field rule made after due notice and hearing with respect to the subject matter of such order or field rule becomes effective.

d) Pre-Hearing Conferences

- 1) Upon his/her own motion, or the motion of a party of record, the Hearing Officer, as designated by the Commission, may convene a meeting of the parties or their counsel in order to:
  - A) Simplify the factual and legal issues presented by the hearing request;
  - B) Receive stipulations, admissions of fact and the contents and authenticity of documents;
  - C) Exchange lists of witnesses the parties intend to have testify and copies of all documents the parties intend to introduce into evidence at the hearing; and
  - D) Discuss and resolve such other matters as may tend to expedite the disposition of the hearing request and to assure a just conclusion thereof.
- 2) Pre-hearing conferences may be held by telephone conference if such procedure is acceptable to all parties.

e) Hearings

- 1) Every hearing shall be held on a date and at a location established by the Commission, and conducted by a Hearing Officer designated by the Commission. The Hearing Officer shall take all necessary actions to avoid delay, to maintain order and to develop a clear and complete record, and shall have all powers necessary and appropriate to conduct a fair hearing and to render a decision on the petition, including but not limited to the following:
  - A) To administer oaths and affirmations;
  - B) To receive relevant evidence;

- C) To regulate the course of the hearing and the conduct of the parties and their counsel therein;
  - D) To consider and rule upon procedural requests;
  - E) To examine witnesses and direct witnesses to testify, limit the number of times any witness may testify, limit repetitive or cumulative testimony and set reasonable limits on the amount of time each witness may testify; and
  - F) To require the production of documents or subpoena the appearance of witnesses, either on the Hearing Officer's own motion or for good cause shown on motion of any party of record. The Hearing Officer may require that relevant documents be produced to any party of record on his/her own motion or for good cause shown on motion of any party of record.
- 2) Every person appearing shall enter his/her appearance by stating his/her name and address. Thereafter, such person shall be deemed a party of record.
- 3) All participants in the hearing shall have the right to be represented by an attorney licensed to practice law in the State of Arkansas. An attorney appearing in a representative capacity in any proceeding hereunder shall file a written notice of appearance identifying his or her name, address and telephone number, and identifying the party represented.
- 4) The Hearing Officer shall allow all parties to present statements, testimony, evidence and argument as may be relevant to the proceeding.
- 5) The Director, or his/her designee, may appear at any public hearing and shall have the opportunity to question parties or otherwise elicit such information as is necessary to reach a decision on the application.
- 6) Preliminary Matters: Where applicable, the following shall be addressed prior to receiving evidence:
  - A) The applicant may offer preliminary exhibits, including documents necessary to present the issues to be heard, notices, proof of publication and orders previously entered in the cause.
  - B) Rulings may be made by the Hearing Officer on any pending motions.
  - C) Any other preliminary matters appropriate for disposition prior to presentation of evidence.



f) Evidence

- 1) Admissibility: A party shall be entitled to present his/her case by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence may be received, but the presiding Hearing Officer shall exclude evidence which is irrelevant, immaterial or unduly prejudicial or repetitious. The rules of evidence and privilege applied in civil cases in the courts of the State of Arkansas may be generally followed; however, evidence not admissible under such rules of evidence may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonable, prudent men in the conduct of their affairs. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, the Hearing Officer shall allow evidence to be received in written form.
- 2) Official Notice: Official notice may be taken of any material fact not appearing in evidence in the record if the circuit courts of this State could take judicial notice of such fact. In addition, notice may be taken of generally recognized technical or scientific facts within the Commission's specialized knowledge.
- 3) Order of Proof: The applicant shall open the proof. Other parties of record shall be heard immediately following the petitioner. The Hearing Officer or Director or his/her designee, as well as any Commissioner may examine any witnesses. In all cases, the Hearing Officer shall designate the order of proof and may limit the scope of examination or cross-examination.
- 4) Briefs: The Hearing Officer may require or allow parties to submit written briefs to the Hearing Officer within 10 days after the close of the hearing or within such other time as the Hearing Officer shall determine as being consistent with the Commission's responsibility for an expeditious decision.

g) Record of Proceedings; Testimony

The Commission shall provide a certified court reporter to take down the testimony and preserve a record of all proceedings at the hearing. Any person testifying shall be required to do so under oath. However, relevant unsworn statements, comments and observations by any interested person may be heard and considered by the Commission as such and included in the record.

h) Postponement or Continuance of Hearing

Any hearing may be postponed or continued for due cause by the Hearing Officer upon his/her own motion or upon the motion of a party to the hearing. A motion filed by a party to the hearing shall set forth facts attesting that the request for continuance is not

solely for the purpose of delay. All parties involved in a hearing shall avoid undue delay caused by repetitive postponements or continuances so that the subject matter of the hearing may be resolved expeditiously. The Applicant may postpone or continue the hearing of an application for three consecutive regularly scheduled Commission meetings without prior approval of the Hearing Officer. After the third consecutive postponement, the application shall be dismissed, unless the Hearing Officer allows an exception for due cause, and the applicant shall be required to re-file in accordance with applicable General Rules in order for an application to be scheduled for a hearing.

i) Default

If a party, after proper service of notice, fails to appear at the pre-hearing conference or at a hearing, and if no continuance is granted, the Commission may then proceed to make its decision in the absence of such party. If the failure to appear at such pre-hearing conference or hearing is due to an emergency situation beyond the parties' control, and the Commission is notified of such situation on or before the scheduled pre-hearing conference or hearing, the Hearing Officer may continue or post-pone the pre-hearing conference or hearing. Emergency situations include sudden unavailability of counsel, sudden illness of a party or his representative, or similar situations beyond the parties' control.

j) Voting

1) In order for the Commission to adopt a motion approving an application as applied for, or as amended by either the applicant or a Commissioner, there must be:

A) A quorum present;

B) A majority of the votes cast must be in favor of the motion outlining the proposed order; and

C) At least five (5) votes cast must be in favor of the motion outlining the proposed order.

2) If a motion approving the application as applied for, or as modified by either the applicant or a Commissioner does not receive the votes required in subparagraphs i) A) through C) above, and no subsequent or substitute motion receives the votes required in subparagraphs i) A) through C) above, then the application shall be deemed to be denied by the Commission.

3) If an application is deemed to be denied by the Commission in accordance with subparagraph i) 2) above, the Commission shall enter an order of denial, which

may be appealed as a final decision under the Arkansas Administrative Procedures Act found in Ark. Code Ann. § 25-15-201 *et. seq.*

4) Nothing in this subparagraph shall limit the Commission's authority to continue any application for due cause.

k) Commission's Order--Final Administrative Decision

Within 30 days of the close of the hearing record, the Commission shall issue findings of fact, conclusions of law and final administrative decision of the Commission signed by the Director. The Commission shall have continuing jurisdiction for the purposes of enforcement, and/or modifications or amendments to the provisions of all orders. Any appeals shall be governed by the Administrative Procedures Act found in Ark. Code Ann. § 25-15-201 *et. seq.*

l) Notice of Order--Recordation

Within 30 days after an order has been issued, a copy of such order shall be mailed by the Commission to each interested party at his/her last known address or his/her attorney of record, and filed in accordance with the Administrative Procedures Act found in Ark. Code Ann. § 25-15-201 *et. seq.*

# **ABANDONED AND ORPHAN WELL PLUGGING PROGRAM**

## **RULE G-1 ABANDONED OR LEAKING WELL AND WELL SITE REMEDIATION**

### **a) Definitions**

#### **1) “Abandoned Well” means:**

- A) a well owned or operated by a Permit Holder which has not produced for over 2 years; or**
- B) a well for which the underlying lease has been released in writing by the lessee or has been declared forfeited or invalid by a court order, and such order is final and the appeal period has lapsed; and the lessor states in writing that the lessor has not leased out the oil and gas working interest to any other person and does not intend to so lease, and that the lessor does not intend to operate the well, and that the lessor desires that the well be plugged; or**
- C) a well owned or operated by a Permit Holder who has made no payment by March 1 of a current annual well fee assessment in accordance with Ark Code Ann. §15-71-116; or**
- D) a well that has been ordered to be plugged by the Commission and the Permit Holder has failed to do so within the time frame specified in the Commission Order; or**
- E) a well site which has not been properly restored following the completion of well plugging activities.**

#### **2) “Well Site Equipment” means the equipment, including but not limited to an associated tank battery, production and injection facility equipment, hydrocarbons from the well that are stored in tanks located on the lease, and hydrocarbons recovered during the plugging operation.**

#### **3) “Well Site” means the area around and near the well, including any associated pits, crude oil or produced water storage tanks or other related production facility equipment, such as injection pumps, compressors or gas processing equipment.**

- 4) “Director” means the Oil and Gas Commission Director of Production and Conservation.
- 5) “Leaking Well” means a well drilled for the exploration, development, storage or production of oil or gas, or for injection, saltwater disposal, saltwater source, observation, and geological or structure test which is leaking salt water, oil, gas, or other deleterious substance into any fresh water formation or onto the surface of the land in the vicinity of the well.
- 6) “Well Site Restoration” means remediation of a well site, including but not limited to the following activities: an emergency clean-up of spilled crude oil or saltwater; remediation of conditions endangering the public health or safety, or contaminating or potentially contaminating surface waters, groundwater, or the surface of the land; work to repair or contain leaks of produced fluids from wells, production or injection equipment, pits or other containment structures, which are contaminating or potentially contaminating surface waters, groundwaters or the surface of the land; or a repairing a well leaking natural gas or hydrogen sulfide gas endangering or potentially endangering public safety or creating a potential a fire hazard.
- b) If the Director finds, upon inspection and/or review of Commission records, that a well drilled for the exploration, development, storage or production of oil or gas, or for injection, saltwater disposal, saltwater source, observation, and geological or structure test, may be abandoned; well site restoration has not been completed; is a leaking well; or the well or well site creates an imminent danger to the health or safety of the public, the Director may schedule a hearing, in accordance with established procedures.
- c) If after notice and a hearing, the Commission finds that a well drilled for the exploration, development, storage or production of oil or gas, or for injection, saltwater disposal, saltwater source, observation, a geological or structure test, may be abandoned; well site restoration has not completed; is a leaking well; or the well or well site creates an imminent danger to the health or safety of the public; the Commission shall issue an order requiring the Permit Holder to properly plug, re-plug, repair, or restore so as to remedy the situation.
- d) If the Permit Holder fails to properly plug, re-plug, repair, or restore so as to remedy the situation within 30 days from the time frame prescribed by the Commission order, the abandoned well or well site; leaking well; a well or well site that creates an imminent danger to the health or safety of the public; or a well site restoration has not been completed, the well or well site shall be subject to the provisions of this Rule.

- e) The Director may then authorize any person to enter upon the land and properly plug, re-plug, repair, or restore so as to remedy the situation. The Director may dispose of all well site equipment and hydrocarbons, to offset the costs of properly plugging, re-plugging, repairing, or restoring so as to remedy the situation. Proceeds from any public sale, auction or private sale of all well site equipment or hydrocarbons shall be deposited into the Plugging Fund or used to offset plugging costs. All work completed under this rule shall be paid with funds from the Abandoned and Orphan Well Plugging Fund.
- f) The Permit Holder shall reimburse the Commission for all costs expended to remedy the situation. All payments shall be by cashier's checks or money order, and shall be deposited in the Abandoned and Orphaned Well Plugging Fund. Failure to reimburse the Commission will result in the initiation of Commission enforcement action to recover the expended funds. Prior to repayment of all expended funds, the Permit Holder shall not be permitted to operate any other existing wells in the Permit Holder's name. Upon repayment and prior to being permitted to operate any wells, the Permit Holder may be required to post additional bond, as determined by the Director in accordance with General Rule B-2, to insure against the plugging of future abandoned wells not plugged by the Permit Holder.

## **RULE G-2 PLUGGING OF ORPHAN WELLS**

a) Definitions:

- 1) “Orphan Well” means a well for which a Permit Holder can not be located, there is no record the well has ever been covered by a Commission required bond, and no fees have ever been paid on the well in accordance with Ark. Code Ann. § 15-71-110.
- 2) “Well Site Equipment” means the equipment, including but not limited to an associated tank battery, production and injection facility equipment, hydrocarbons from the well that are stored in tanks located on the lease, and hydrocarbons recovered during the plugging operation
- 3) “Well Site” means the area around and near the well, including any associated pits, crude oil or produced water storage tanks or other related production facility equipment, such as injection pumps, compressors or gas processing equipment.
- 4) “Director” means the Oil and Gas Commission Director of Production and Conservation.

b) If after review of the Commission records, the Director determines a well or well site to be orphaned, that well or well site may be administratively determined to be eligible for plugging, without the need for a hearing. Following designation as an orphaned well or well site, the Director may elect to properly plug, re-plug, or restore so as to remedy the situation, and authorize any person to enter upon the land properly plug, re-plug, or restore so as to remedy the situation.

c) All work completed under this rule shall be paid with funds from the Abandoned and Orphan Well Plugging Fund. Additionally, the Director may dispose of all well site equipment and hydrocarbons, to offset the cost of the well plugging and well site restoration operations. Proceeds from any public sale, auction or private sale of all well site equipment or hydrocarbons shall be deposited into the Plugging Fund or used to offset plugging costs.

**RULE G-3 TRANSFER OF WELLS IN THE ABANDONED AND ORPHANED WELL  
PLUGGING PROGRAM**

- a) Definitions
- 1) “Well” as used in the Rule (G-3) shall only mean wells that are abandoned as defined in General Rule G-1 (a) (1), or orphaned as defined in General Rule G-2 (a) (1).
  - 2) “Commission” means the Arkansas Oil and Gas Commission.
  - 3) “Director” means the Director of Production and Conservation.
- b) When a transfer request is received, on a form prescribed by the Director, for a well, the following documentation must be submitted by the proposed new Permit Holder:
- 1) a signed new base lease properly recorded in the county where the well is located; or
  - 2) an affidavit stating a new base lease has been obtained and properly recorded in the county where the well is located;
- c) Upon review and acceptance of the transfer request, and prior to approval of the transfer request, the proposed new Permit Holder shall:
- 1) pay a salvage value for the downhole well equipment as follows:
    - A) \$500 per well for wells less than 3000 feet in depth; and
    - B) \$1000 per well for wells equal to or greater than 3000 feet in depth; and
  - 2) pay a salvage value for the tanks, pumping units, and other related equipment, as determined by submission of 2 independent salvage value estimates from commercial salvage oil and gas production equipment dealers and approved by the Director or his or her designee;
  - 3) pay the fair market value per barrel, to be determined at the time of the transfer approval, for all oil fluids (hydrocarbons) stored on the lease or unit; and
  - 4) if applicable, provide financial assurance in accordance with General Rule B-2 and file all other required organizational and registration forms.
- d) All payments shall be by cashier’s checks or money order, payable to the Commission, and shall be deposited in the Abandoned and Orphaned Well Plugging Fund.



- e) The Director has sole discretion to approve or deny requests for transfer of the well. If, upon review of a transfer request for the well, the Director determines that property rights, environmental or public safety and welfare concerns will be advanced through plugging the well, the transfer request may be denied.

**MARK-UP**

**RULE B-5 - SUBMISSION OF WELL RECORDS AND ISSUANCE OF  
CERTIFICATE OF COMPLIANCE**

- a. During the drilling, original completion, recompletion, or workover of every well, the owner, operator, contractor, driller or other person responsible for the conduct of drilling, original completion, recompletion or workover operations, shall keep adequate records of the well being drilled, all of which shall be accessible to the Commission and its agents at all reasonable times.
- b. For purposes of this rule, original completion shall be defined as initial zone perforation, installation of down hole production equipment (if applicable) and configuration of wellhead for production, excluding pipeline connections. Any further completion work, after the initial configuration of the wellhead, shall be considered a recompletion or workover, and subject to the filing requirements of Section (d) or (f) below.
- c. For purposes of this rule, recompletion is as defined in General Rule A-4.
- d. For purposes of this rule, workover is as defined in General Rule A-4. Upon completion of workover operations, only well records specified in Section ~~(e)~~ (f)(1)(3) are required to be submitted.
- e. Wells drilled as dry holes, where production casing has not been set, shall be subject to the well record submission requirements specified in Section (f) (1)(2) and (3) within 30 days after the completion of drilling activities.
- ~~e.f.~~ Upon original completion or recompletion of the well, the operator, contractor, driller, or other person responsible for the conduct of the drilling operation shall file with the Commission:
  1. Properly filled out Well Completion Report.
  2. All electric logs or other geophysical logs of the open well bore, which measure resistivity, porosity, temperature, and gamma ray emission and for planned directional and horizontal wells, borehole deviation and direction logs including a true vertical depth logs, to be submitted in a 1 inch, 2 inch and 5 inch to 100 foot scale format or other scale format acceptable to the Commission. All logs shall be submitted, at a minimum, as paper copies in standard continuous logging paper format. If digital copies of the logs can be provided from the logging service company, the operator is also required to submit copies of the digital logs in either LAS (ASCII Format) or Digital TIFF Image (200 DPI Black & White) Raster Format to the Commission on an approved electronic storage device. If digital copies of the logs cannot be provided by the logging service company, the operator shall file an affidavit with the Commission stating digital logs could not be provided by the logging service company.
  3. All logging and well service company tickets applicable to the completion or recompletion operation, which indicate all logging and completion activities occurring in the well.

4. Properly filled out Request for Certificate of Compliance.
  5. Application to Abandon, if applicable other than for a dry hole
- f.g. For directional or horizontal wells, or deviated wells not in compliance with General Rule B-30, the following shall also be submitted:
- (1) A post drilling plat shall be filed with any Completion and Recompletion Report to demonstrate the actual location of all vertical, directional and horizontally drilled boreholes in the drilling unit. The plat should provide and present the following:
    - A. The locations of all wells which have been drilled within the drilling unit (except for those wells that have been plugged and abandoned), by providing their surface and bottom hole location, and either midpoint perforations for deviated or directionally drilled wells or the closest point along any lateral section of the horizontal portion of the well bore (whichever is applicable) measured to the nearest mineral lease, drilling unit or division line within a governmental section, whichever applies to the established drilling unit in that field; and
    - B. The distance between common sources of supply for which an allowable determination is required; and
    - C. The actual location of the entire perforated length of the lateral section in a horizontal well showing the set back distances to offset wells.
  - (2) A directional survey in table form, accompanied by the following:
    - A. A two dimensional cross section diagram, viewed perpendicular to the axis of maximum lateral borehole displacement, which depicts the measured and true vertical depth and the displacement from vertical of the wellbore; and
    - B. An azimuth plot viewed in plan view providing displacement of the well path from the surface location.
- g. h. The above reports shall be filed within 30 days of the original completion, recompletion or workover of the well and prior to commencement of production. Upon receipt of the required information specified in Section ~~(e)~~ (f) (1), (2) and (4), and Section (o) (8) of General Rule B-43 if applicable, a Certificate of Compliance shall be issued granting authority to produce and transport oil and/or gas for a period of 30 days at which time the required information specified in Section ~~(e)~~ (f) (3) must be on file in order for a final Permit to Produce and Transport to be issued. However, if completion activities are not completed within 90 days of the setting of the production casing or other production related casing, the required information specified in (f) (1), (2) and (3) are required to be submitted, pending submission of final reports at the conclusion of completion activities and a request for a Certificate of Compliance.

- | ~~h.~~ i. Failure to comply with the provisions of this rule shall be sufficient reason to cause the suspension of the issuance of any further drilling permits on a statewide basis to that operator until the required information is submitted to the Commission, within 10 days following written notice provided to the operator of the failure to provide the required information.
- | ~~i.~~ j. If an operator makes a request, in writing, that the logs described in Section ~~(e)~~ (f) (2) be kept confidential, the request will be honored for a period not to exceed 90 days after the logging for completion or abandonment of the well, provided that the report or the data thereon, when pertinent, may be introduced in evidence in any public hearing before the Commission or any court, regardless of the request that such record be kept confidential.

## MARK UP

### RULE D-16 - BACK PRESSURE TESTS FOR NATURAL GAS WELLS FOR PRODUCTION ALLOWABLE DETERMINATION

#### a) Definitions

(1) AOF shall mean absolute open flow.

- ~~1-b)~~ All new wells, regardless of the amount of daily production, are subject to ~~An~~ initial one (1) point test, which shall be run within ten (10) days after a new well has commenced production. The Permit Holder of the gas well shall provide the Commission not less than seventy-two (72) hour notice in advance of such test, which may be witnessed by a representative of the Commission. Except as provided for in General Rule B-43(l) or other Commission general rules regulating production allowables, the production allowable for such well shall be calculated based upon the AOF. The AOF shall be deliverability calculated determined from based upon the deliverability such established by an initial one (1) point test; and from a State one (1) point test which shall be conducted by flowing the well at maximum deliverability for a period of twenty-four (24) hours through the production facilities into the pipeline. A minimum pressure draw down of thirty percent (30%) will be required. If such draw down is not achieved over twenty-four (24) hours, then the test may continue for up to 72 hours to measure deliverability or deliverability may be calculated if the required drawdown is not achieved. wellhead flowing pressure will be assumed at such percentage rate. The assigned allowable shall never exceed the maximum deliverability of the well. All new wells producing in excess of the assigned allowable, based on an annual balancing of production for that well, on the date the initial one point test was run the subsequent year, must be shut-in until all overproduction is eliminated. A retest may be conducted at any time when requested by the Permit Holder if the Commission results are questioned by the Permit Holder or when the Permit Holder is directed by the Commission to conduct a retest.

- c) All existing gas wells, which include zone recompletions or workovers, producing in excess of 1 MMCF per day and all existing gas wells ~~now~~ recompleted in a new source of supply and workover gas wells ~~shall be tested for deliverability to determination the AOF. The Permit Holder of the gas well shall provide the Commission not less than seventy-two (72) hour notice in advance of such test, which shall~~ may be witnessed by a representative of the Commission. Except as provided for in General Rule B-43(l) or other Commission general rules regulating production allowables, the production allowable for such well shall be calculated based upon the AOF utilizing the methodology as specified in subparagraph (b) above. provide that the Commission is given not less than seventy-two (72) hour notice in advance of such test. The test shall be conducted within ten (10) days after the well has commenced production, approved to turn to pipeline with the results of all initial tests being filed with the Commission within ten (10) days after the test is run. The results of the test shall be used to determine the production allowable, which shall commence on the date of the test. If the test is witnessed by the Commission, the test results shall be forwarded to the Permit Holder for review. A retest may be conducted at any time when requested by the Operator Permit Holder if the Commission results are questioned by the Permit Holder or when the Permit Holder is directed by the Commission to conduct a

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retest. If the test is not witnessed, the test results shall be submitted to the Commission within 10 days after the test is run, which shall retain continuing jurisdiction. A penalty of one (1) day reduction in the allowable for such well shall be assessed for each calendar day that the filing of such test data is late. All gas wells, subject to be tested under the provisions of this paragraph, shall continue to be subject to an annual test, and a production allowable determination, in accordance with sub-paragraph (e) below. Until such time that the well has a daily production rate of less than 1 MMCF per day, as evidenced by an annual test, the well shall continue to be tested. Wells which are assessed an exceptional location penalty, shall remain subject to an annual test and allowable determination until the annual well production is 75 MCF per day or less. All wells subject to be tested, under the provisions of this subparagraph, producing in excess of the assigned annual production allowable, must be shut-in on the annual balancing date of based on the last test run the subsequent year, until all overproduction is eliminated.

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- d) The annual State one (1) point test for a All new or existing wells, including zone recompletions or workovers, except wells subject to an exceptional location penalty, gas wells producing less than 182.5 1 MMCF per day year shall not be subject to an allowable determination as calculated in paragraph (e) below, but shall not be required to be required to report, on a form prescribed by the Director, a 24 hour shut-in pressure and absolute open flow rate. The collection of the shut-in pressure and absolute open flow rate information is not required to be witnessed by a representative of the Commission. The 24 hour shut-in pressure and absolute open flow rate information results of all tests shall be filed with the Commission within thirty (30) ten (10) days after the test is run. A penalty of a one (1) day reduction in the allowable for such well shall be assessed for each calendar day that the filing of such test data is late. The Commission shall have the right to require an wells covered by this sub-paragraph, to have the 24 hour shut-in pressure and absolute open flow rate information resubmitted unwitnessed test to be rerun if for any reason the previously submitted information it appears to be inaccurate. In that event, the Commission may require the collection of another shut-in pressure such retest to which may be witnessed by a Commission representative, or for the Operator to furnish a written explanation of the procedure utilized for the testing of said well and the results reported therefrom. All unwitnessed tests shall be filed with the Commission on or before July 1<sup>st</sup> of each calendar year. Failure to provide the shut-in pressure and AOF rate information will result in the failing in which the Certificate of Authority to Produce and Transport for that well shall to be subject to suspension or cancellation until such time as the required information is submitted. An accurate flow test shall be run during completion or recompletion and the results thereof shall be promptly filed with the Commission on Form AOGC 3 failing in which the allowable for said well shall be subject to suspension or cancellation. No representative of the Commission shall be required to witness a completion or recompletion flow test.

- ed) The initial and annual tests, run on wells as required in paragraphs (b) and (c) above, shall be conducted as follows:

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- (1) Before a test is started, the wellbore should be cleared of any accumulated fluids. The well shall be shut-in for a minimum of twenty-four (24) hours for a one (1) point test. The pressure shall be measured with a dead-weight pressure gauge or a calibrated test gauge approved by the Commission. All flow rate measurements shall be obtained by the use of an orifice meter or other authorized metering device in good operating condition previously approved by a representative of the Commission. The

Commission shall be furnished a written explanation setting forth in detail the reasons why such data cannot be obtained in accordance with this procedure.

~~Form AOGC 13 shall be revised as submitted and all absolute open flow calculations shall be converted from bottom hole to surface determined by a forty five degree (45°) slope (n = 1) from the initial or annual one point test.~~

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- (2) ~~Purchaser nominations will be discontinued. The method of allocating production allowable for all gas wells within the State of Arkansas under the jurisdiction of the Commission which are currently subject to the Method VI allowable calculation shall be as follows:~~

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Methods for allowable calculations for new wells as specified in paragraph (b), or existing wells producing greater than or equal to 1 MMCF per day as specified in paragraph (c) above, shall be as follows:

- A) Wells at a legal location and in a standard 640 acre unit:

$$\text{Allowable} = \text{AOF} \times 0.75$$

- B) Wells at a legal location and not in a standard 640 acre unit:

$$\text{Allowable} = \text{AOF} \times 0.75 \times \text{unit acreage}/640(\text{standard unit acreage})$$

- C) Wells that are assigned an exceptional location penalty and in a standard 640 acre unit:

$$\text{Allowable} = \text{AOF} \times \text{penalty factor (encroachment footage/legal footage)}$$

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- D) Wells that are assigned an exceptional location penalty and not in a standard 640 acre unit:

$$\text{Allowable} = \text{AOF} \times \text{penalty factor (encroachment footage/legal footage)} \times \text{unit acreage}/640(\text{standard unit acreage})$$

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#### METHOD VIII: SEVENTY FIVE PERCENT (75%) ABSOLUTE OPEN FLOW

$$\text{Allowable} = \frac{\text{Wellhead Absolute Open Flow}}{0.75} \times \frac{\text{Unit Acreage}}{\text{Standard Acreage}} \times \frac{\text{Exceptional Allowable Percentage}}{100}$$

With the minimum allowable to be assigned by the Commission as:

$$\text{Minimum Allowable} = 182.5 \text{ MMCF/YR} \times \frac{\text{Exceptional Location}}{100} \times \frac{\text{Unit Acreage}}{\text{Standard Acreage}}$$

- (3) ~~The minimum allowable assigned for wells located in fields which have standard units that are less than 640 acres shall be reduced to less than the 182.5 MMCF/year by a fraction, the numerator of which shall be the acreage within said unit and the~~

denominator of which shall be the unit acreage for the field. Wells producing less than 1 MMCF per day, and do not have an exceptional location penalty, may produce at AOF.

- (4) Wells that have an AOF of less than 75 MCF, and are assigned a exceptional location penalty, may produce at AOF.

~~g) Every well in North Arkansas subject to the allocation formula shall be entitled to produce an amount of gas equal to its total allowable accrued from the date of completion or the six (6) month period immediately preceding the date of first sales, whichever is the lesser, in addition to the regular allowable which is otherwise allocated to such well. Such initial accrued underproduction may be produced in addition to the regular well allowable during the succeeding twelve (12) month period. On July 1<sup>st</sup> of each subsequent year, any accrued underproduction shall be eliminated. Any well having an accumulated overproduction as of such balancing date shall be shut in until all overproduction is eliminated; provided, however, that any well which produces less than 182.5 MMCF during the year preceding such date shall be exempt from being shut in unless the rate of production is the result of a penalty upon the well allowable in which case, the minimum allowable will be reduced by the penalty being placed upon the well allowable. All wells producing in excess of the assigned annual allowable must be shut in on July 1<sup>st</sup> of the subsequent year until all overproduction is eliminated.~~



# ***Blanchard* Case Gets Soft Landing But Opinion Suggests Issues The Good News, First:**

- The right to conduct seismic testing is implied within an oil and gas lease;
- A prohibition upon lease assignment does not prohibit permitting another party to conduct seismic testing;

# ***Blanchard* Case Gets Soft Landing But Opinion Suggests Issues Now, The Bad News:**

- Former AOGC General Rule B-42, which implied an owner could veto seismic testing, was not an unconstitutional taking.

# ***Strohacker* Comes to the Fayetteville Shale**

# Possible Subtle Shift in Strohacker Standard is Suspected

- If the reservations had been made at a time when oil and gas production, or explorations, were general, and **legal or commercial usage** had assumed them to be within the term "minerals," certainly appellant should prevail.
- 'The best construction is that which is made by viewing the subject of the contract as the **mass of mankind** would view it; for it may be safely assumed that such was the aspect in which the parties themselves viewed it.' *Schuykill Nav. Co. v. Moore*, 2 Whart. (Pa.) 477.

# **Federal District Court Voids Lease for Untimely Payment of Draft**

# **A.O.G.C. Continues to Modernize Rules and Procedures**